

AL-14-000-6014



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

APR 30 2014

OFFICE OF CONGRESSIONAL AND  
INTERGOVERNMENTAL RELATIONS

The Honorable John Shimkus  
Chairman  
Subcommittee on Environment and the Economy  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, D.C. 20515

Dear Chairman Shimkus:

Thank you for the opportunity to respond to the questions for the record following the November 13, 2013, hearing on "S. 1009, The Chemical Safety Improvement Act." Enclosed are the EPA's responses to the questions.

If you have any further questions, please contact me or your staff may contact Sven-Erik Kaiser in my office at [kaiser.sven-erik@epa.gov](mailto:kaiser.sven-erik@epa.gov) or (202) 566-2753.

Sincerely,

A handwritten signature in black ink, which appears to read "Laura Vaught", is written over the typed name.

Laura Vaught  
Associate Administrator

Enclosure

House Committee on Energy and Commerce  
Subcommittee on Environment and Economy  
Hearing on "S.1009, The Chemical Safety Improvement Act"  
November 13, 2013  
Questions for the Record

**The Honorable Henry A. Waxman**

**Transparency has been a significant problem under TSCA. Consumers, public health advocates, researchers, and state governments are often in the dark about chemical risks, even when EPA has data. This is because the statute prohibits EPA from sharing information that has been marked as Confidential Business Information, or CBI, but requires no substantiation of CBI claims. Current law includes no penalty for over claiming CBI.**

**The result is a system where the public has no access to any information about approximately 20% of the 83,000 chemicals on the TSCA inventory, and the chemical identities of 66% of new chemicals covered by pre-manufacture notices (PMNs) are marked CBI. EPA has been working to check these CBI claims, and has made significant strides to make more chemical information public, but the process requires significant public resources.**

**Waxman 1. Should TSCA reform legislation require upfront substantiation of CBI claims, and why is this important?**

**S. 1009 would require up front substantiation for some, but not all, CBI claims. The bill contains a long list of types of information that will be presumed to be CBI, without substantiation.**

**Response:** The Administration's principles for reform of chemicals management legislation state that TSCA reform should include stricter requirements for a manufacturer's claim of Confidential Business Information (CBI) and that manufacturers should be required to substantiate their claims of confidentiality. This principle is important to assure transparency and public access to information.

**Waxman 2. Does exempting large categories of information from the substantiation requirement comport with EPA's principles for TSCA reform?**

**Response:** As indicated above, the Administration's principles for reform of chemicals management legislation include the need for stronger provisions for transparency and public access to information, including a requirement for the substantiation of confidentiality claims. Stronger provisions on transparency and increased access will ensure that legitimate CBI claims are protected while providing the American public with greater access to chemical information.

The relevant principle states: "TSCA reform should include stricter requirements for a manufacturer's claim of Confidential Business Information (CBI). Manufacturers should be required to substantiate their claims of confidentiality. Data relevant to health and safety should not be claimed or otherwise treated as CBI. EPA should be able to negotiate with other governments (local, state, and foreign) on

appropriate sharing of CBI with the necessary protections, when necessary to protect public health and safety.”

**One impact of EPA’s review of CBI claims has been a significant decrease in the number of claims being made. For example, under the last Inventory Update Rule, manufacturers claimed that the use of a chemical in children’s products was confidential 24% of the time. In the most recent version – the Chemical Data Reporting Rule, the rate of confidentiality claims for the use of a chemical in children’s products dropped to 0.4%.**

**Waxman 3. Why does the EPA collect and publish information about what chemicals are used in children’s products?**

**Waxman 4. Are there other types of uses that might be particularly relevant and important for the public at large and vulnerable populations?**

**Response to Questions 3 and 4:** Chemical Data Reporting (CDR) information is used by the EPA to support risk screening, assessment, priority setting and management activities. Processing and use information reported in 2012 will help the EPA screen and prioritize chemicals for the purpose of identifying potential human health and environmental effects. Collecting the information every four years will assure that the public has timely access to current and improved data. This information will also provide the public with greater access to a wide range of information on those chemicals that are produced in large quantities. Improved data will enhance the agency's ability to more effectively identify and address potential chemical risks.

The 2012 CDR collected information on more than 7,600 chemicals in commerce including information on more than 350 chemicals used in children’s products such as toys, playground and sporting equipment, arts and crafts materials, and furniture. In addition, manufacturers reported on more than 1,700 chemicals used in consumer products generally. Users of the CDR data are able to view chemicals with commercial and consumer uses and by geographic area for facilities where chemicals are being manufactured. This information helps inform potential exposures and would be relevant for the public and vulnerable populations.

For additional information on the 2012 CDR, see the Federal Register Notice for 2012 CDR reporting at: <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OPPT-2009-0187-0393>.

AL-14001-1970



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JUL 24 2014

OFFICE OF CONGRESSIONAL AND  
INTERGOVERNMENTAL RELATIONS

The Honorable Darrell Issa  
Chairman  
Committee on Oversight and Government Reform  
United States House of Representatives  
Washington, D.C. 20515

Dear Chairman Issa:

Thank you for your letter of July 2, 2014, requesting responses to Questions for the Record following the June 25, 2014, hearing on EPA oversight.

The responses to your questions are provided as an enclosure to this letter. Again, thank you for your letter. If you have any further questions, please contact me, or your staff may contact Cheryl Mackay in the EPA's Office of Congressional and Intergovernmental Relations at [mackay.cheryl@epa.gov](mailto:mackay.cheryl@epa.gov) or (202) 564-2023.

Sincerely,

A handwritten signature in black ink, which appears to read "Laura Vaught", is positioned above the printed name.

Laura Vaught  
Associate Administrator

Enclosure

cc: The Honorable Elijah Cummings, Ranking Member

**House Committee on Oversight and Government Reform**  
**Hearing on "Management Failures: Oversight of the EPA"**

**June 25, 2014**

**Questions for the Record**

**Questions from Chairman Darrell Issa**

**1. When will the 2014 Renewable Fuel Standard (RFS) requirement be finalized?**

EPA continues to work on the 2014 Renewable Fuel Standard (RFS) requirements final rule, which will establish the required applicable volumes and percentage standards. The rule is a priority for us, and we hope to finalize it soon.

**2. Why does EPA continue to miss Congressionally-mandated deadlines for issuing RFS requirements?**

The deadlines that Congress established for issuing annual rules under the RFS program are aggressive. The challenges involved with proposing and finalizing even a minor rulemaking can be significant, and in the case of RFS rulemakings, where the issues and analysis involved are often complex, the challenges are typically even more substantial. The RFS touches a range of complex environmental, energy, and agricultural issues, and a broad range of stakeholders are interested and engaged in the policy process. Furthermore, the fact that the rules establishing the RFS standards are required by law to be issued on an annual basis exacerbates these challenges.

Nevertheless, EPA has met with multiple stakeholders to listen to their input on the proposed rule and to solicit any new and relevant data that should be factored into setting the volume standards for 2014. These stakeholders include representatives from the biofuel sector, the agricultural sector, petroleum refiners, environmental groups, and various other organizations and sectors. The EPA also received over 340,000 comments on the 2014 RFS proposal, which we are currently evaluating. EPA is committed to improving our internal processes and we will continue to strive to better our performance in meeting the statutory deadlines.

**3. Will EPA commit to getting the 2015 RFS requirements issued by November?**

We intend to act as quickly as possible to propose the rule that will establish the volume requirements and standards under the RFS for 2015. EPA shares the goal of getting back on the statutory schedule for issuing the annual standards rulemakings.

**4. Is EPA still planning to exercise its waiver authority for the 2014 RFS?**

The EPA did propose to exercise various waiver authorities under the Clean Air Act for the proposed 2014 volume rulemaking, and we received significant comment on this issue. We are unable, however, to comment on policy decisions that will be made as part of the final rule to

establish the 2014 required volumes under the RFS, as we are still in the process of finalizing that rulemaking.

**5. Will EPA increase the biodiesel requirement for 2014?**

While the EPA proposed to maintain the biomass-based diesel standard at 1.28 billion gallons for 2014, whether and to what degree the biomass-based diesel standard for 2014 will be increased above 1.28 billion gallons is an issue that will be decided in and announced with the 2014 annual RFS standards final rulemaking.

AL-14-000-6014

FRED UPTON, MICHIGAN  
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA  
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115  
Majority (202) 225-2927  
Minority (202) 225-3641

February 28, 2014

The Honorable Jim Jones  
Assistant Administrator  
Office of Chemical Safety and Pollution Prevention  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dear Assistant Administrator Jones:

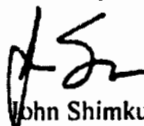
Thank you for appearing before the Subcommittee on Environment and the Economy on Wednesday, November 13, 2013, to testify at the hearing entitled "S. 1009, The Chemical Safety Improvement Act."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Friday, March 14, 2014. Your responses should be e-mailed to the Legislative Clerk in Word format at [Nick.Abraham@mail.house.gov](mailto:Nick.Abraham@mail.house.gov) and mailed to Nick Abraham, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



John Shimkus  
Chairman

Subcommittee on Environment and the Economy

cc: The Honorable Paul Tonko, Ranking Member,  
Subcommittee on Environment and the Economy

Attachment

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The result is a system where the public has no access to any information about approximately 20% of the 83,000 chemicals on the TSCA inventory, and the chemical identities of 66% of new chemicals covered by pre-manufacture notices (PMNs) are marked CBI. EPA has been working to check these CBI claims, and has made significant strides to make more chemical information public, but the process requires significant public resources.

1. Should TSCA reform legislation require upfront substantiation of CBI claims, and why is this important?

S. 1009 would require up front substantiation for some, but not all, CBI claims. The bill contains a long list of types of information that will be presumed to be CBI, without substantiation.

2. Does exempting large categories of information from the substantiation requirement comport with EPA's principles for TSCA reform?

One impact of EPA's review of CBI claims has been a significant decrease in the number of claims being made. For example, under the last Inventory Update Rule, manufacturers claimed that the use of a chemical in children's products was confidential 24% of the time. In the most recent version – the Chemical Data Reporting Rule, the rate of confidentiality claims for the use of a chemical in children's products dropped to 0.4%.

3. Why does EPA collect and publish information about what chemicals are used in children's products?

4. Are there other types of uses that might be particularly relevant and important for the public at large and vulnerable populations?





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*final Response*

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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AL-14-000-8910

FRED UPTON, MICHIGAN  
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA  
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115  
Majority (202) 225-2927  
Minority (202) 225-3641  
April 30, 2014

The Honorable Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dear Administrator McCarthy:

Thank you for appearing before the Subcommittee on Energy and Power and the Subcommittee on Environment and the Economy on Wednesday, April 2, 2014, to testify at the hearing entitled "The Fiscal Year 2015 EPA Budget."

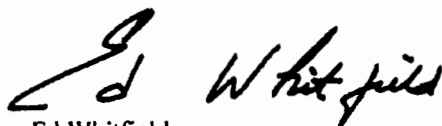
Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

Also attached are Member requests made during the hearing. The format of your responses to these requests should follow the same format as your responses to the additional questions for the record.

To facilitate the printing of the hearing record, please respond to these questions and requests with a transmittal letter by the close of business on Wednesday, May 14, 2014. Your responses should be mailed to Nick Abraham, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed to [Nick.Abraham@mail.house.gov](mailto:Nick.Abraham@mail.house.gov).

Thank you again for your time and effort preparing and delivering testimony before the Subcommittees.

Sincerely,



Ed Whitfield  
Chairman  
Subcommittee on Energy and Power



John Shimkus  
Chairman  
Subcommittee on Environment and the Economy

cc: The Honorable Bobby L. Rush, Ranking Member, Subcommittee on Energy and Power  
The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment and the Economy

Attachments

**Attachment 1—Additional Questions for the Record**

**The Honorable Ed Whitfield**

1. EPA's budget calls for a total of over \$234 million to "Address Climate Change." How much of this relates to the President's climate action plan?
2. With respect to EPA's proposed greenhouse gas (GHG) rule entitled "Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units" announced September 20, 2013, we wrote you on November 15, 2013 concerning the statutory provisions of the Energy Policy Act of 2005 ("EPACT 2005"), including provisions codified at 42 U.S.C. §15962(i) and 26 U.S.C. §48A.
  - a. Why has EPA still not provided a written response to that letter?
  - b. Prior to receipt of that letter, were you aware of those EPACT 2005 provisions? Please provide a yes or no response.
  - c. Prior to receipt of that letter, who, if anyone, to your knowledge at EPA was aware of those EPACT 2005 provisions?
  - d. Please provide a detailed explanation of why EPA did not address those EPACT 2005 provisions in the proposed rule you signed in September.
3. On February 5, 2014, EPA posted a "Notice of Data Availability" (NODA) in support of the proposed GHG rule for new power plants referenced above. While EPA posted the NODA on its website on February 5, 2014 and solicited extensive comment, EPA failed to issue a press release or other regulatory announcement notifying the public of the posting of the NODA or the fact that the agency was soliciting comments on the EPAct 2005 provisions. Why did EPA fail to issue a press release or make a public regulatory announcement on February 5, 2014 or shortly thereafter?
4. With respect to EPA's proposed GHG rule for new electric generating units referenced above, EPA proposes to require that any new coal-fired power plants install carbon capture and storage (CCS) technologies that EPA maintains have been adequately demonstrated for use at full-scale commercial power plants.
  - a. During the interagency review process did Department of Energy (DOE) officials or staff provide any written comments on EPA's proposed rule? Please provide a yes or no response.
  - b. During the interagency review process did DOE officials or staff provide written comments on EPA's proposed CCS requirement for new coal-fired power plants? Please provide a yes or no response.
  - c. Are all DOE comments during the interagency review process regarding the proposed rule included in the administrative record for the proposed rule?
5. With respect to the GHG regulations EPA plans to propose for modified and reconstructed electric generating units by June 1, 2014:



- a. Will the agency propose standards that can be achieved at modified and reconstructed coal-fired units using technologies that are currently in commercial service at operating electric generating units?
  - b. What emissions levels does the agency believe are achievable by modified and reconstructed coal-fired electric generating units?
  - c. What technologies currently in commercial service does the agency believe could be used at modified and reconstructed coal-fired units to achieve those reductions?
6. With respect to the GHG regulations EPA plans to propose for existing electric generating units by June 1, 2014:
  - a. Does EPA plan to impose statewide numerical GHG emissions reduction requirements?
  - b. Does EPA plan to propose emissions levels for existing coal-fired units that can be achieved using technologies and control equipment that are currently in commercial service at operating electric generating units?
  - c. What emissions levels does the agency believe are achievable by existing coal-fired electric generating units?
  - d. What existing technologies and control equipment in commercial service does the agency believe could be used at existing coal-fired units to achieve those reductions?
7. EPA has advised the Committee that it is working on GHG standards for aircraft. What is EPA's current schedule for issuing such standards?
8. EPA has advised the Committee that it is working on additional GHG standards for trucks. What is EPA's current schedule for issuing such standards?
9. For each of the following source categories, please indicate whether the agency is currently conducting work relating to potential GHG regulations for those sources, and if the agency is conducting work, the agency's current timetable for performing analyses and making determinations:
  - a. Petroleum refineries
  - b. Pulp and paper facilities
  - c. Municipal landfills
  - d. Iron and steel production
  - e. Animal feeding operations
  - f. Portland cement manufacturing
10. On May 15, 2013, EPA provided a list of GHG Prevention of Significant Deterioration (PSD) permits issued by EPA or States that included 87 permits. Please identify all additional GHG PSD permits that have been issued by EPA or States since that list was prepared.
11. Looking across the range of EPA regulations that affect electric power generation, there are sizable cumulative impacts of Clean Air Act rules, Clean Water Act rules, and other rulemakings that risk substantial retirements of electric generating capacity. Has EPA prepared any analyses to identify the worst case scenarios for electricity generation and reliability that could result from the cumulative impact of its rules?

- a. If yes, will EPA make those risk assessments available to the Committee?
  - b. If no, why hasn't EPA performed such risk assessments?
12. The Energy Information Administration (EIA) issued an update on February 14, 2014 regarding its Annual Energy Outlook 2014 projections and indicated there will be more coal-fired power plant retirements by 2016 than have been scheduled. EIA stated:
 

“Coal-fired power plants are subject to the Mercury and Air Toxics Standards (MATS), which require significant reductions in emissions of mercury, acid gases, and toxic metals. The standards are scheduled to take effect in April 2015, a deadline that is conditionally allowed to be extended by up to one year by state environmental permitting agencies. Projected retirements of coal-fired generating capacity in the AEO2014 include retirements above and beyond those reported to EIA as planned by power plant owners and operators. In these projections, 90% of the coal-fired capacity retirements occur by 2016, coinciding with the first year of enforcement for the Mercury and Air Toxics Standards.”

  - a. Is EPA tracking all of the coal-fired electric generating units that will be retiring by 2016, coinciding with the first year of enforcement for the MATS rule? If yes, how many coal-fired electric generating units in the United States are expected to retire by 2016?
  - b. Have any coal-fired electric generating units been granted additional time to comply with the MATS rule beyond 2016? If yes, which units have been granted additional time?
13. On March 10<sup>th</sup>, the *New York Times* published an article entitled: “Coal to the Rescue, but Maybe Not Next Winter” raising concern that there could be significant price increases for electricity because “[s]cores of old coal-fired power plants in the Midwest will close in the next year.”
  - a. Is EPA evaluating the cost and reliability concerns that have been raised regarding the pending shutdowns of coal-fired power plants in the Midwest, or other regions of the United States, that have announced they will close in the next one to two years?
  - b. What is EPA's current assessment of these concerns?
  - c. Is EPA taking any steps to postpone the retirement of any of these plants to ensure there will be no risks to electric reliability in the next few years?
  - d. Is EPA taking any steps to postpone the retirement of any of these plants to ensure there will not be significant electricity price increases over the next few years?
14. On April 6, 2014, the *Chicago Tribune* published an article entitled: “NRG Chief: Utilities need to 'play it straight'” in which the chief executive of NRG stated that: “The story that has not really been reported is how close the system came to collapsing in January.”
  - a. Does EPA agree there were serious reliability concerns in January?
  - b. Since January, has EPA been consulting with DOE, Federal Energy Regulatory Commission and other federal agencies regarding the electric reliability concerns associated with the pending closure of many coal-fired units over the next 1 to 2 years, coinciding with the MATS rule?

- i. If yes, which agencies and which EPA officials are consulting with those agencies? In your response, please identify when such consultations have occurred and which EPA officials have engaged in the consultations.
  - ii. If no, will EPA be consulting with those federal agencies? In your response, if consultations are planned please identify when such consultations will occur and which EPA officials will engage in those consultations.
- 15. In addition to an unprecedented number of shutdowns of coal-fired electric generating units by 2016, coinciding with the compliance date for the MATS rule, on January 24, 2014, the CEOs of five nuclear companies wrote to EPA to express concern about the agency's "Cooling Towers" or "316(b)" rule. They raised concerns that the rule "could trigger the premature retirement of a significant portion of the nuclear fleet."
  - a. Do you have any concerns about the potential "premature retirement of a significant portion of the nuclear fleet" due to EPA rules?
  - b. Is preserving the existing nuclear fleet important to the Administration?
  - c. What steps, if any, is EPA taking to address the concerns expressed by these nuclear companies and can you provide any assurances that EPA's cooling towers rule will not cause or contribute to the premature retirement of a significant portion of the nuclear fleet?
- 16. According to a Feb. 5, 2014 *Greenwire* article, DOE is reportedly analyzing a scenario in which one third of U.S. nuclear power plants retire and the impact that would have on the president's Climate Action Plan. Is EPA also analyzing this scenario?
  - a. Is EPA concerned about the impacts on electric reliability from the premature retirement of nuclear power plants?
  - b. What is EPA doing to ensure its actions do not cause or contribute to the premature retirement of nuclear power plants?
- 17. EPA issues National Ambient Air Quality Standards (NAAQS), but years can pass before it provides guidance about how to implement the new standards, including permitting, to States and stakeholders. Going forward, will EPA commit to providing States and stakeholders with this essential information at the time EPA issues a final NAAQS?
- 18. While NAAQS State Implementation Plans and attainment can take years, a new NAAQS is effective immediately for new air permits. Any delay in EPA's implementation guidance and updating air quality models makes it more difficult for businesses to expand and create jobs. Will EPA issue clear guidance to regions and States encouraging the use of near-term alternatives in any situation where the issuance of new implementation updates is delayed?
- 19. Many of our nation's energy infrastructure projects rely on nationwide permits under the Clean Water Act when building new infrastructure or upgrading and maintaining existing infrastructure. On March 25, 2014, EPA and the U.S. Army Corps of Engineers jointly released a proposed rule addressing waters of the United States.

- a. Has EPA analyzed the potential impact of the proposed rule on building new energy infrastructure or upgrading and maintaining existing infrastructure? If yes, where in the rulemaking documents is that analysis?
  - b. What does EPA consider the impacts of the proposed rule to be on building new energy infrastructure or upgrading and maintaining existing infrastructure?
    - i. Will there be an increase in the need for individual permits?
    - ii. Will there be increases in processing time, cost and manpower to administer and process this increase in individual permits?
    - iii. If these costs were not considered in the proposed rule, why not?
  - c. To the extent that EPA has said in briefings that the agency expects that industry will be able to continue to rely on existing nationwide permits, please explain how the agency arrives at that conclusion and where the analysis is to support that conclusion in the agency's rulemaking documents.
20. The President in executive orders and public statements has said streamlining the permitting process for energy projects – particularly those necessary to support renewable energy projects – is a high priority for this Administration. Individual permits by definition take longer to reach a final decision.
- a. If more individual permits will be necessary for energy projects, can you explain how an increase in the need for individual permits in this proposal is consistent with the President's energy permit streamlining objective?
  - b. In addition, can you point to where in the preamble, regulatory text or economic analysis there is any discussion of direct and indirect impacts on energy infrastructure: for example, the time, manpower and administrative oversight necessary to conduct the increased burden of carrying out such federal requirements as NEPA reviews, potential ESA consultations, historic preservation review, tribal consultations, and responses to citizen suit enforcement?
21. With respect to EPA's proposed "Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces, and New Residential Masonry Heaters," published Feb. 3, 2014 in the Federal Register:
- a. The proposed rule contemplates complex regulations on some classes of products that have never before been subject to regulation. As a practical matter, this means that EPA may not have the extent of knowledge or expertise, nor has the agency collected as extensive an amount of data, as with other categories that have been subject to regulation. Further, there are an estimated 97 instances in the proposal where EPA specifically asks for comments on various provisions. Given what is expected to be an expedited review process, and our understanding that EPA has indicated that EPA has no plans to enlist contractor support for comment review, how is it possible for the agency to adequately respond to the large volume of comments it is likely to receive on the proposal?
  - b. Given the number of new products which will be covered in the proposed NSPS for residential wood heaters, and the current backlog at OECA, the enforcement and certification arm of EPA, what does the EPA propose to do to protect small businesses who try to certify to the new rule from excessive paperwork backlogs?

22. With respect to the Safe Drinking Water Act and the Clean Air Act, are any of the enhanced oil recovery (EOR) projects referenced in the preamble for the proposed GHG rule for new electric generating units announced on September 20, 2013, complying with anything other than UIC Class II requirements?
  - a. With respect to EPA's Subpart RR-Geologic Sequestration of Carbon Dioxide Rule, are there any Monitoring, Reporting and Verification (MRV) plans that have been submitted to EPA for approval under Subpart RR of the GHG Reporting Program?
  - b. If yes, how many have been submitted? Also, if yes, how many have been approved under Subpart RR of the GHG Reporting Program?
23. According to EPA, the agency initiated the Bristol Bay Watershed Assessment in response to a petition for EPA to exercise its 404(c) authority. Has the agency received any other similar petitions, and if so what has been requested? Has the agency received any petitions concerning the agency's use of 404(c) on any existing permits?
24. Does EPA have any plans to potentially perform studies on or initiate the 404(c) process on any other waters at this time? If so, where?
25. Does EPA have any plans to potentially reevaluate any existing 404 permits pursuant to its 404(c) authority? If so, which ones?
26. The current definition of fill material, finalized in May, 2002, solidifies decades of regulatory practice by unifying the Corps and EPA's prior conflicting definitions so as to be consistent with each other and the structure of the CWA. However, both EPA and the Corps have stated that they are considering revising the definition of fill material. These changes could mean that certain mining-related activities would be deemed illegal, thereby preventing mining companies from operating. The FY14 Omnibus appropriations bill included language to prevent the Corps from working on any regulation changing the definition of fill material.
  - a. Has EPA engaged in discussions with the Corps on revising the rule?
  - b. What is EPA's rationale for potentially revisiting the well-established definition of the Sec. 402 and Sec. 404 programs?
  - c. What specific problems is EPA seeking to address by revisiting the definition of fill material, and how exactly is EPA intending to address them?
29. Some advanced biofuel developers have proposed that EPA consider a pathway to allow for the generation of RINs under the renewable fuel standard (RFS) when renewable hydrogen is used to displace conventional hydrogen in petroleum refining operations. The pathway, if approved, would create an economic incentive to produce hydrogen from biomass sources, including bio-methane collected from landfill emissions and bio-digesters. Renewable hydrogen, if used in refinery hydro-reactors, would increase the fraction of renewable content in the nation's gasoline and diesel supplies.

Discussions regarding a pathway application have been underway since September, 2013. EPA has indicated that, in order to properly consider this pathway, it needs additional technical information, which stakeholders have developed and provided earlier this year. However, EPA has indicated that, currently, it is unable to assess this information or meet with industry experts to discuss it due to the overwhelming demands on the Office of Transportation and Air Quality's (OTAQ) time from other regulatory matters.

- a. Has OTAQ determined a timetable for resuming consideration of a renewable hydrogen pathway under the RFS?
- b. Has OTAQ determined that it cannot devote time to any further processing of RFS pathways at this time, and if so, how long is that expected to last?

**The Honorable Joe Barton**

- 1. As set forth on EPA's website, the Agency's Clean Air Scientific Advisory Committee (CASAC) provides advice to the EPA Administrator on the technical bases for EPA's national ambient air quality standards.
  - a. Are CASAC advisory committee meetings transcribed?
    - i. If yes, are those transcripts made accessible to the public on EPA's website?
    - ii. If not, will transcripts be prepared going forward and will EPA make those transcripts accessible to the public on the Agency's website?
  - b. Are CASAC advisory committee meetings webcast?
    - i. If yes, are those webcasts archived and made accessible to the public on EPA's website?
    - ii. If not, will EPA webcast these meeting going forward, archive the webcasts and make the webcasts accessible to the public on the Agency's website?
- 2. As set forth on EPA's website, EPA's Science Advisory Board (SAB) advises the agency on technical matters, including reviewing the quality and relevance of the scientific and technical information being used or proposed as the basis for EPA regulations.
  - a. Are SAB advisory committee meetings transcribed?
    - i. If yes, are those transcripts made accessible to the public on EPA's website?
    - ii. If not, will transcripts of those meetings be prepared going forward and will EPA make those transcripts accessible to the public on the Agency's website?
  - b. Are SAB advisory committee meetings webcast?
    - i. If yes, are those webcasts archived and made accessible to the public on EPA's website?
    - ii. If not, will EPA webcast these meeting going forward, archive the webcasts and make those webcasts accessible to the public on the Agency's website?
- 3. As set forth on EPA's website, the Advisory Council on Clean Air Compliance Analysis (COUNCIL) was established to provide advice, information and recommendations on technical and economic aspects of analyses and reports EPA prepares on the impacts of the Clean Air Act on the public health, economy, and environment of the United States.
  - a. Are COUNCIL advisory committee meetings transcribed?

- i. If yes, are those transcripts made accessible to the public on EPA's website?
  - ii. If not, will transcripts of those meetings be prepared going forward and will EPA make those transcripts accessible to the public on the Agency's website?
- b. Are COUNCIL advisory committee meetings webcast?
  - i. If yes, are those webcasts archived and made accessible to the public on EPA's website?
  - ii. If not, will EPA webcast these meeting going forward, archive the webcasts and make those webcasts accessible to the public on the Agency's website?
- 4. In December 2007 the City of Fort Worth partnered with the EPA on the Alternative Asbestos Control Method (AACM) project performed at the Oak Hollow Apartments in Fort Worth, Texas. Upon completion of the AACM project, the EPA prepared a peer reviewed draft report. However, the final version of that report was never published and as a result, the project has entirely stalled despite repeated attempts by the City for clarity and answers.
  - a. Why has the EPA repeatedly decided not to publish legitimate scientific research so that the public and broader scientific community may have access to this data?
  - b. Furthermore, I request copies of all documentation related to the recent "re-review" of documents related to the AACM and the data generated during and after the demolitions as referenced in the April 26, 2013 letter from the EPA to the City of Fort Worth.

**The Honorable Joseph R. Pitts**

- 1. In Pennsylvania, we have benefitted greatly from having electric generating units that burn coal refuse (also called waste coal) to create affordable, domestic energy. By processing this coal refuse, these units have had significant positive effects on the surrounding environment as well. In fact, to date, these units have been used to reclaim some 8,200 acres of damaged land and improve hundreds of miles of streams.

The EPA's Mercury and Air Toxics Rule (MATS) takes effect next April, however, and among other things, the rule establishes hydrogen chloride and sulfur dioxide emission limitations that are unattainable for most coal refuse fired units. In anticipation, the industry has approached the EPA seeking reconsideration under the rule and has also met with various members of your staff including Acting Assistant Administrator for the Office of Air and Radiation Janet McCabe.

*Would you please provide an update on the status of these discussions and the industry's request for reconsideration? What is your schedule for responding? Will you commit to continuing these discussions with the industry in order to avoid shutting down these facilities and harming both the local environment and economy?*

- 2. In the preambles of various EPA proposed rules, the agency has specifically mentioned and discussed the environmental benefits associated with reclamation of coal refuse to produce electricity. If the EPA's Mercury and Air Toxics Rule (MATS) is enforced as it is currently written, however, a number of these facilities will likely be forced to close as a result of compliance costs. *Does the EPA have an alternative plan to clean up these coal refuse piles if and when these facilities are forced to shut down as a result of MATS?*

3. I know that one of our colleagues from Pennsylvania, Mr. Rothfus, has been actively engaged on the issue of electrical generating units that process coal refuse and has been seeking some sort of solution that will allow these units to continue in operation after the Mercury and Air Toxics Rule (MATS) takes effect next spring.

As currently written the rule establishes hydrogen chloride and sulfur dioxide emission limitations that are unattainable for most coal refuse fired units. There is significant concern that implementation of the rule will force many plants to shut down and their workers to lose their jobs.

Mr. Rothfus has asked me to invite you and your staff to tour these facilities and see firsthand the sort of positive impacts that they have had on the surrounding areas. *Will you commit today to making this a priority and ensuring that those on your staff who are responsible for this issue will travel and meet with the coal refuse industry to work to find a mutually-agreeable solution?*

4. The EPA's Mercury and Air Toxics Rule (MATS) takes effect next April, and many in the coal industry have expressed significant concern about the associated compliance costs. *To date, how many utility and non-utility coal fired boilers have announced they are shutting down as a result of MATS? How many requests for reconsiderations has the EPA received, and how many has your agency acted upon? What is your schedule for responding to any and all pending requests for reconsideration so that industry can have certainty about their future costs?*
5. The month of January 2014 saw two historic cold snaps in the Eastern United States. The first, the polar vortex, brought the lowest temperatures in decades across the East and Southeast in early January. The second event brought more record-cold temperatures to the Northeast and Midwest, along with paralyzing snow and ice to the Southeast.
  - a. Let me ask some straight-forward yes or no questions:
    - i. Does affordable, reliable electricity play a critical role in promoting economic growth?
    - ii. Does affordable, reliable electricity play a critical role in protecting public health and safety?
    - iii. Does affordable, reliable electricity play a critical role in responding to severe weather and natural disasters, regardless of the causes?
6. Recently, the Chairman of the North Carolina Public Utility Commission and other officials wrote to Acting Assistant Administrator of the EPA, Janet McCabe, about EPA's pending rules for existing power plants. They stated that "It is no secret that the economic recovery across the United States is fragile and many ratepayers struggle to pay their monthly bills, including their utility bills."
  - a. Do you agree that the economic recovery across the United States is fragile?
  - b. Do you agree that many ratepayers struggle to pay monthly utility bills?
  - c. In developing rules, does EPA analyze the impacts on the rates people pay for electricity?
  - d. In conducting that analysis, is there a threshold for electricity price increases that EPA finds unacceptable? For example, if rates are going to go up by ten, twenty, fifty dollars a month per household in communities in Pennsylvania?



- e. We had testimony just last month about how those kinds of rate increases – even twenty dollars a month -- can be too much for many ratepayers, especially in today's economy.
7. The Natural Resources Defense Council has proposed an cap-and-trade approach to regulating carbon dioxide emissions from power plants. An analysis of that proposal by the National Economic Research Associates concluded that NRDC's proposal could cost consumers \$13 billion to \$17 billion per year in higher electricity and natural gas prices.
    - a. Is an approach that will mean those kind of higher energy costs acceptable to EPA?

**The Honorable Lee Terry**

1. Are you familiar with the Farmer Identity Protection Act: A bipartisan bill introduced by Crawford, McIntyre, Costa and myself?
  - a. Do you support or oppose?
  - b. Barring legislation, what assurances can you give the farmers of America that their information is safe?
2. Last week, you testified before the House Interior Appropriations Subcommittee and said farmers would have greater certainty because you now have put out a list of 50 or more exemptions. Experts in the Clean Water Act have indicated that the certainty you talk about comes about only because EPA has decided broadly to assert jurisdiction in spite of the Supreme Court decisions in SWANCC and Rapanos.
  - a. Can you tell the committee where you have not asserted jurisdiction where you previously claimed it?
  - b. Can you tell the committee how your proposed rule comports with the Court's rulings in SWANCC and Rapanos?
  - c. Is it correct that a farmer only qualifies for any one of these exemptions if the farmer follows NRCS standards?
  - d. Is it true that any – or all – of these exemptions can be changed, curtailed or even eliminated by NRCS without notice to the public and without public input?

**The Honorable Michael C. Burgess**

1. Please list the names, titles, salaries, and dates of Title 42 appointments for all EPA employees compensated under the Title 42 program, including current and past recipients.
2. In its response to the GAO's recommendation in 2012 regarding handling of ethics issues under the Title 42 program, EPA wrote that although they disagreed with the recommendation, the agency would soon implement plans that would address issues that arise after appointment under Title 42. GAO stated that these plans may address the concerns documented in the 2012 report and may be the basis for closing the recommendation as implemented. GAO has stated that it is currently reviewing plans issued by EPA and will follow up in December 2013 to understand if additional plans have been released internally to the agency.

- a. What plans has the EPA issued in response to the issues raised by the GAO recommendation? Have additional plans been released internally to the agency?
  - b. Has EPA been in communication with GAO regarding Title 42 issues over the last five months? If so, what is the status and nature of the communications?
3. Does EPA have plans to use authority under Title 42 Section 209 (f)? If so, has EPA developed guidance for implementing such authority?
4. In December 2010, EPA began a pilot of using market salary data to estimate salaries of what Title 42 candidates could earn in positions outside of government given their education, experience, professional standing, and other factors. According to the GAO, this pilot was to conclude in December 2012. What is the status of the market salary pilot? Did EPA analyze the pilot's effect on salary negotiations? If yes, what did the analysis show?
5. EPA's authority to use Title 42 pay scales granted through the annual appropriations process expires in 2015. Does EPA intend to ask for an extension to use this authority? Has EPA had discussions with the Appropriations Committees in the House and/or Senate regarding such an extension? Does EPA intend to request that it be granted Title 42 hiring authority through the authorizing committees, either in the House or Senate?
6. It appears that a number of executive branch agencies are working on methane. EPA is looking to regulate oil wells with associated gas, DOE is holding roundtables, DOI is looking at methane capture for royalties, the WH is issuing white papers and I think I'm probably missing a few. Can you give the committee an update on this issue, who is on point, how is it being coordinated, where is it headed and what are you doing to avoid duplication of effort and overlapping regulatory and budget requirements?
7. Please provide the committee with the research funding EPA has provided to the current ozone CASAC panel members, the research institutions with which the panel members are associated, and the name and amount of each project grant by individual or research institution?
8. EPA's website for tracking regulations used to indicate that EPA planned to propose ozone standards in 2014, but now has no schedule indicated.
  - a. What is EPA's current schedule for proposing new ozone standards?
  - b. What is EPA's current schedule for finalizing the standards?
9. The most recent ozone standards were published in 2008, and have not yet been implemented. In proposing new standards next year, will EPA propose retaining the current standards set in 2008?
10. EPA estimated that the 2010 ozone NAAQS reconsideration could have cost American manufacturing, agriculture and other sectors up to \$90 billion per year. I'm concerned that we are driving manufacturing out of the U.S. to other countries with lax environmental standards.
  - a. In analyzing these regulations, does EPA consider the economic and environmental effects of driving manufacturing offshore to countries with little or no environmental controls? If not, shouldn't the agency consider that?
11. Regarding the Keystone XL Pipeline, has EPA completed its analysis of SEIS and will EPA try to delay the process again?

12. In this rule, I understand that EPA contends the proposed rule would actually result in fewer federal jurisdictional determinations and provide greater clarity to the regulated community.

Furthermore, EPA claims that by codifying a specific exclusion for ditches located in uplands and drain only uplands should result in far fewer man made drainage ditches becoming subject to the Clean Water Act's (CWA) regulatory and permitting requirements.

However, the proposed rule also contains an entirely new and significantly expanded definition of "tributary" that includes any feature (e.g., natural or manmade) that has a bed, bank, ordinary high water mark, and eventually contributes flow (surface or subsurface) to "Traditional Navigable Waters." Furthermore, the proposed rule's definition of tributary specifically includes manmade ditches, pipes, or culverts.

In my District (Texas 26<sup>th</sup>), like many other places in the country, there are literally thousands of miles of manmade roadside drainage ditches installed and maintained by county governments for primary purpose road safety. These roadside drainage ditches are located in both uplands and other areas.

How can these manmade roadside drainage ditches benefit from the proposed rule's exclusion when these ditches also considered a tributary under the proposed rule?

13. I understand that the EPA worked to create a scientific study to illustrate the need for this regulation. This scientific report, entitled "Connectivity of Streams and Wetlands to Downstream Waters" states that all waters require federal protection, regardless of size or significance in connectivity.

In the *Rapanos* and the *SWANCC* decisions that preceded it, the Supreme Court made clear that there is a limit to federal jurisdiction under the CWA, specifically rejecting the notion that any hydrologic connection is a sufficient basis to trump state jurisdiction. Do you think that the term "significant nexus" should be quantified in order to ensure that it does not extend jurisdiction to waters that have a de minimis connection to jurisdictional waters? Perhaps this is something that the National Academy of Science could look into?

14. Why didn't the EPA wait until the scientific study's Science Advisory Board panel gave their final recommendations (expected in May/June) before proposing the rule?

#### **The Honorable Bill Cassidy**

1. My area has many communities who feel particularly strapped by the price tag required for compliance with EPA regulations under the Safe Drinking Water Act. I noticed the President's proposed budget provides that 30 percent of state allocations from the Drinking Water State Revolving Loan Fund would (DWSRF) be used for debt forgiveness.
- a. How does this use of the Drinking Water State Revolving Loan Fund compare to other needs addressed by the DWSRF?
  - b. In 2009, the American Recovery and Reinvestment Act doubled the amount made available to DWSRF accounts. How much of the debt forgiveness is meant to cover loans made for the "shovel ready projects" covered by this spending?

- c. From a practical perspective, what types of needs ordinarily addressed by the DWSRF will be squeezed out by use of DWSRF money this way?
  - d. Does the Obama Administration consider the current DWSRF self-sustaining?
2. The Safe Drinking Water Act's funding is meant to assure compliance with the public health-based mandates of the law, not merely build infrastructure. I noticed the President's budget contains a Sustainable Water Infrastructure Policy to "develop sustainable systems that employ effective utility management practices to build and maintain the level of technical, financial, and managerial capacity necessary to ensure long-term sustainability."
- a. Can you assure me, apart from a general desire to provide technical assistance to drinking water systems, that this particular program will not divert precious resources away from compliance and towards construction planning in certain communities?
3. Last week, EPA and the Corps of Engineers jointly released a proposed rule relating to "waters of the United States."
- a. Before issuing the proposed rule, did EPA assess whether the proposed rule could affect the building of new energy infrastructure? For example:
    - i. Did EPA analyze whether it may be more difficult to build a new power generating facility, or expand an existing one?
    - ii. Did EPA analyze whether it may be harder to lay new pipelines or power lines because of the need to obtain wetlands or other permits?
  - b. Has EPA analyzed whether the proposed rule would trigger new permitting requirements relating to maintaining existing energy infrastructure? For example:
    - i. Will there be a need for new permits to do routine maintenance on transmission lines or pipelines? Or to obtain individual permits for activities that are currently covered under general or nationwide permits?
4. As you know, EPA issues many regulations that can impose very large compliance costs, many of which are ultimately passed on to consumers. Last year, I introduced the Energy Consumers Relief Act (HR 1582) to provide greater transparency and oversight over EPA's multi-billion dollar energy related-rules.
- a. At the time the House considered that bill, the Congressional Budget Office estimate indicated there would be about 25 more energy-related EPA rules in the next 5 years that would cost \$1 billion or more to implement.
    - i. Is CBO's estimate accurate? Are there really 25 billion-dollar energy related rules coming out of the EPA in the next five years?
    - ii. If you don't know, can you get back to the Committee about whether the estimate is accurate?
  - b. Can you provide us a list of all rules EPA is currently working on or plans to work on in the foreseeable future that the agency expects will impose compliance costs of \$1 billion or more?

### **The Honorable Adam Kinzinger**

As you know, the most pressing issue facing the biodiesel industry, and indeed all renewable fuels industries, is the EPA's recently proposed rule for volumes under the Renewable Fuel Standard (RFS). Biodiesel companies across the country – based on the clear signals of support sent by this Administration – invested their time and resources to build biodiesel plants that would assist in meeting the targets set by the RFS.

Biodiesel is an unmitigated RFS success story. It is the first EPA-designated Advanced Biofuel being produced on a commercial-scale across the country. The industry, with the help of strong energy policy, has crossed the billion-gallon threshold for three consecutive years, and this year is on pace for a record year of more than 1.7 billion gallons. Gallon for gallon, according to EPA's own calculations, biodiesel is reducing greenhouse gas emissions by 57 to 86 percent. All of this is happening as biodiesel blends at the pump – usually of 5 percent or less – are saving consumer's money.

Under the proposal EPA believes biomass based diesel can compete just as it did in 2013 even though it would dramatically cut production back to 1.28 billion gallons. As proposed, the advanced standard would also be reduced to 2.2 billion gallons. Based on the equivalence value of our fuel and nesting, there would be a maximum on 290 million gallons available for biomass-based diesel, other advanced fuels and cellulosic production. With potential for carryover of excess 2013 volume into 2014, we could see a market closer to 1 billion gallons. Obviously, cutting an industry from a 2 billion gallon production rate down close to 1 billion gallons would cause incredible harm. Plants would close. People would be out of work. Further, EPA has proposed this cut for 2014 and 2015, for two years, sending a terrible signal to investors and entrepreneurs who are poised to continue building this industry.

In this regard, please provide written responses to the following questions:

1. With no feedstock, infrastructure or compatibility issues, what other factors did the administration take into account when not increasing the RVO?
2. What factors has the industry not met in order to have its volume increased to at least 1.7 billion gallons? What information do you still need?
3. Have you taken into consideration how potential Argentinian biodiesel imports will impact the volume of RFS qualifying biodiesel in 2014?
4. When do you anticipate the 2014 RVO being finalized?
5. Are there aspects of biodiesel that make you uncomfortable with it as a replacement to diesel fuel?

### **The Honorable H. Morgan Griffith**

1. In 1972 when the Amendments to the Federal Water Pollution Control Act were being discussed by Congress, Senator Edward Muskie of Maine, in addition to strongly emphasizing the need to protect the nation's waterways, reminded the chamber that there were "three essential elements" to the legislation: "uniformity, finality, and enforceability." How does your interpretation of your authority under the Clean Water Act comport with the notion of permit finality?
2. Do you agree that finality is an important consideration for permits? How does EPA intend to provide certainty to the regulated community that they can receive due process to have their projects fairly

considered, and can rely on their permits once they are issued, in light of the agency's recent actions concerning Pebble and Spruce?

**The Honorable Bill Johnson**

1. You've said that hydraulic fracturing can be done safely and have agreed with former EPA Administrator Lisa Jackson that there have been no confirmed cases of hydraulic fracturing impacting drinking water. Given that the President's Climate Action Plan relies heavily on the use of natural gas, what is your vision for getting the American public to understand that hydraulic fracturing is safe and that fracking has unlocked an American energy revolution that is lowering all Americans energy prices, creating jobs, helping to lower GHG emissions and revitalizing such industries as the manufacturing, steel and chemical sectors?
2. I am aware that the EPA is considering whether a health-based standard is possible for this industry, and I applaud your consideration of this discretionary approach. I also understand that the brick industry has supplied you with all the information necessary to evaluate a health-based compliance alternative for every major source. Could you please describe in detail: What impediments you see to establish a health-based rule for this small industry comprised of a large number of small businesses and how those impediments could be overcome? It would make sense if you would use this approach, since it seems to be both protective of the environment, achievable, and allow the industry to survive.
3. An emission standard is broadly defined in the Clean Air Act. Why would the EPA look to a single facility to establish the emission level for all facilities to meet, rather than consider a health-based metric as a possible emission standard format?
4. The rule-makings for the brick industry have been impacted by the EPA's "sue and settle" approach to dealing with third-party lawsuits on both rounds. The now-vacated MACT was rushed in 2003 due to a pending lawsuit from an environmental group, resulting in a rule that was vacated by the courts for its deficiencies. Now, this industry is facing another court-ordered schedule based on a consent decree that you recently accepted. What assurances can you give the Committee, and this industry, that the schedule will not be used as justification for yet another rushed, deficient rule? What can you do to ensure that new rule will include a full consideration for the alternative approach of using a combination of both health-based and work-practice standards to ensure that the requirements of the Clean Air Act are followed and the environment is protected, without requiring huge burdens on a critical industry that provide limited to no environmental benefit?
5. My office has been coordinating with the Ohio Department of Natural Resources (ODNR), Ohio Environmental Protection Agency and your Agency to clarify what the Ohio Department of Natural Resources would need to include in their Risk Based Data Management System in order to be fully compliant with the Emergency Planning and Community Right-to-Know Act. Can your Agency provide ODNR with the requested 'check list' of all elements, as soon as possible, that would need to be included in their upgraded database to ensure that full compliance is met?

**The Honorable Gus Bilirakis**

1. Administrator McCarthy, Tampa Electric Company serves my constituents in Hillsborough County, Florida. I understand that they recently completed a ten year, \$1.2 billion emissions reduction initiative which reduced CO<sub>2</sub> emissions by 20% compared to 1998 levels. Their most significant CO<sub>2</sub> reductions began in 2005. As 2005 is also the suggested baseline year for reductions under EPA's 111d rule for existing power plants, recognition of these reductions is important to protecting Tampa Electric customers

who are benefiting from and paying for these long-term investments. How does the EPA intend to recognize early reductions, such as Tampa Electric's, in its upcoming ILLD proposal?

**The Honorable Diana DeGette**

As you know, in 2010 former Congressman Hinchey and I requested an EPA study to determine the potential impacts of hydraulic fracturing on drinking water. I understand that the draft report will be available in late 2014. In your FY2015 budget request, you ask for \$6.1 million for the study.

1. Are any additional progress reports forthcoming before the draft report is released?
2. When do you expect this paper to be final?

One part of the study I am especially interested in is the case studies.

You identified five sites for retrospective case studies and directed EPA, the state and industry to be present during sampling to verify and review the samples for quality assurance. At about this time last year, EPA's Tier 2 data quality assurance was underway.

3. What is the status of this effort with respect to these five sites?

An important part of the drinking water study is the inclusion of several prospective case studies. These case studies will document the hydraulic process at each stage including drilling, completion, and production. Measurements will be taken before and after each stage. It was my understanding that pursuant to investigations, there were agreements between industry and EPA to develop these case studies together.

4. At this time last year, EPA was in the process of identifying locations. Have these locations been identified? If not, can you provide specific reasons why the locations have not yet been identified?
5. What are the specific criteria required for choosing these locations? If the locations have not been chosen, what criteria are difficult to satisfy?
6. Are the states and industry collaborating with EPA as planned to develop the prospective studies? If not, what is impeding their participation?
7. Will analysis of the prospective studies be included in the draft report and final report, or will this need to be incorporated into a follow-up report?

For FY2015, the EPA is proposing to spend \$1 million to support states and tribes in making permitting decisions and to provide oversight related to implementation of EPA's guidance on hydraulic fracturing with diesel fuels.

8. Can you provide some examples of how you will assist states and tribes in following this guidance?
9. Will states that have primacy for UIC wells get assistance as well?

In collaboration with USGS and DOE, EPA has budgeted about \$8 million towards research on the potential impacts of hydraulic fracturing on air, ecosystem, and the water quality.

10. What were the results of this effort from last year?

11. What are your milestones for this project this year?
12. Will you keep the public informed of your progress/findings as the research unfolds?
13. Do you expect this to be an ongoing effort that flows again into the following fiscal year?
14. What are the respective roles of DOI, DOE, and EPA in the effort?

**The Honorable Doris O. Matsui**

1. In 2010, Congress passed legislation of mine that protects American consumers from the formaldehyde toxin used in common household items. It is my understanding that the EPA is still in the drafting phase for the final rule that the comment period ended last October. What is your anticipated timing for completing your work on formaldehyde emissions in composite wood products?
2. Do you expect to harmonize your regulations with the California Air Resources Board with respect to laminated products as directed by Congress?



## **Attachment 2—Member Requests for the Record**

*During the hearing, Members asked you to provide information for the record, and you indicated that you would provide that information. For your convenience, descriptions of the requested information are provided below.*

### **The Honorable Billy Long**

1. Administrator McCarthy, during the hearing you stated that there are currently wood stoves available on the market that meet the recently proposed New Source Performance Standards for residential wood heaters. Would you please provide the Committee a list detailing what brands and models of wood stoves are on the market today that meet the proposed standards?

### **The Honorable Gene Green**

1. Under the FY 2015 EPA budget proposal, does the EPA have any money allocated for new Superfund cleanup sites?
2. Was EPA able to begin any new Superfund projects during the FY 2013 – FY 2014 timeframe?

**Subcommittee on the Interior, Environment and Related Agencies  
United States Senate Appropriations Committee  
Hearing on the  
Environmental Protection Agency  
Fiscal Year 2015 Budget  
April 9, 2014**

**Questions from Senator Jack Reed, Chairman:**

**Cutting the Workforce**

Q: The Fiscal Year 2015 budget request proposes cutting EPA's workforce, which is a significant departure from prior years. This year the budget proposes a staffing level of 15,000. This is almost 1,600 fewer staff than you asked for last year and would result in the lowest agency staffing level since 1989. **Please outline EPA's plans for reshaping the workforce? What assurance is there that EPA will retain sufficient expertise to fulfill its mission?**

Q: There seems to be a discrepancy in the Fiscal Year 2015 request between staff numbers that will decline and an operating budget that will increase. **Why does the Environmental Programs and Management account increase by \$113 million dollars if the overall number of employees will be reduced? If EPA isn't investing in its workforce, how will additional operating funds be used?**

Q: EPA has already started to reduce its workforce through an early buyout that offers incentives for voluntary separation from the Agency. **Are there particular groups of employees targeted for the buyout? Which programs are most heavily impacted? When reductions are completed, what will the smaller EPA look like?**

**EPA Furloughs – Payroll Discrepancies**

Q: One of the tough budget choices that EPA made last year was the decision to furlough EPA employees. Since that time, it has come to the subcommittee's attention that EPA had at least \$33 million dollars of unspent funds at the end of the fiscal year.

- 1. Please explain why EPA had unspent funds from fiscal year 2013 and why these funds weren't used to minimize the impact of the furlough on EPA employees?**
- 2. While it's not unusual for an agency to have some carryover funds, fiscal year 2013 was not a normal year. How did the agency make its spending decisions and determine funding priorities?**
- 3. How many hours of furlough could have been avoided with the unspent funds from fiscal year 2013?**

**E-Enterprise Initiative**

Q: EPA has proposed a major \$70 million dollar initiative, called E-Enterprise, to transition compliance reporting from paper to electronic web-based reporting. **What does EPA hope to**

**achieve with the \$70 million dollar investment and what will its effect be on states and the regulated community?**

**Q: How many years does EPA expect to request funding for the initiative? What is the total cost estimate and how does EPA expect to spread these costs over future budget cycles?**

**Q: The budget request discusses the potential cost savings that the regulated community will realize through electronic reporting. Please share details about anticipated savings and, if funding is provided in FY 2015, when is it anticipated that the initiative be fully operational?**

**Questions from Senator Patrick Leahy:**

Administrator McCarthy, both you and President Obama have said that we must have the courage to act before it is too late and make historic investments in resilience to climate change. The President further promised that his FY15 Budget Proposal would include a \$1 billion Climate Resilience Fund. I applaud this priority considering the accelerating impacts of climate change. In Vermont, the EPA recognizes that climate change is impacting water quality in Lake Champlain and is requiring the State of Vermont to address these impacts as part of a new EPA Total Maximum Daily Load (TMDL) plan for phosphorus pollution. In light of the Administration's strong commitment to spending \$1 billion in FY15 for climate resilience, and that the Lake Champlain phosphorus TMDL will be among the first in the country where the EPA requires climate change to be addressed, **please tell me how in FY15 and beyond, you will direct additional federal resources to support implementation of resilience measures as part of the EPA's Lake Champlain phosphorus TMDL efforts.**

I have heard from a number of Vermont residents, farmers, and businesses with concerns about the use of persistent herbicides and the presence of such herbicides in compost. Their gardens and farms have been seriously damaged by compost or mulch that was contaminated with persistent herbicides. These potent chemicals are applied to lawns, pastures, hayfields and roadsides, and continue to be highly toxic to plant growth even after residues on grass or hay have been composted. These herbicides even remain potent in the composted manure of livestock and horses that graze on treated pastures and hay.

I am worried about the environmental and financial risk to the multi-billion dollar compost industry if new standards and testing are not developed to identify the

presence of these herbicides in compost, and if steps are not taken to ensure that persistent herbicides cannot persist in compost at dangerous levels. I fear that without new protections there will continue to be tremendous financial loss and environmental damage similar to what we have already experienced in Vermont.

This problem will only escalate as more states and municipalities make it illegal to send leaf and yard debris and food scraps to landfills, and require greater use of composting. Unless the issue of persistent herbicides in compost is addressed the market for finished compost may simply disappear, or composters may find themselves liable for sizeable payments to their customers with damaged crops, as happened in Vermont.

**As the EPA continues its work to review of registration for these persistent herbicides, beginning with the ongoing review of Picloram, can you assure me that you will take into account the impact on the compost industry and will the EPA require these persistent herbicides to break down in the composting levels that are not phytotoxic to plants?**

**What is the EPA doing to develop publically available test methodologies to detect the presence of these herbicides in finished compost and in compost feedstocks?**

The EPA has proposed new fine particulate matter (FPM) emission standards for residential wood heaters. I applaud this long overdue update of new source performance standards, considering that cordwood heater technology has improved in the 25 years since the standard was first issued and we now better understand the serious health impacts of fine particulate matter air pollution. I am concerned, however, that implementation of the new standards will place heavy burdens on manufacturers of EPA certified wood heaters as they transition to cleaner technology, while not moving fast enough to take the most polluting devices, those currently exempted from regulation, off the market.

**How will the EPA's implementation of a final standard for FPM emissions from wood heaters protect public health while ensuring emission limits and compliance schedules that are viable for U.S. manufactures of high quality certified appliances?**

**What more can and will the EPA do to encourage homeowners across the country to make investments in new wood heater technology to change out**

**their older inefficient wood stoves or fireplaces with new EPA certified wood stoves, while also encouraging homeowners to support American manufacturers?**

**Question from Senator Tom Udall:**

Radon

Our State Environment and Health Department has brought to my attention a concerning reduction in the EPA budget.

I understand the President's budget zeroed out a categorical grant program for radon detection and information. This is disappointing. I understand that we need to make hard choices, but this program provides a lot of significant impacts for every dollar spent.

After smoking, radon is the second leading cause of lung cancer in the United States and the leading cause in non-smokers. It's a significant public health problem throughout the United States.

States like New Mexico have used these grants to inform citizens through outreach, education, and training to lower their risk from exposure to this natural radioactive gas that exists in our homes, schools, and commercial and government buildings. I'd like to work with you to discuss the future of this program.

Can you explain why this program was zeroed out and what we can do to restore funding?

**Questions from Senator Lisa Murkowski, Ranking Member**

**1) Greenhouse Gas New Source Performance Standards (NSPS)-New Units**

Ms. McCarthy, I am concerned about the impact of the EPA's proposed rule setting New Source Performance Standards for new units and soon to be issued proposed rule for existing units. Alaska's electric system is unique compared to the grid in the lower 48. As you may know, there are 126 certified electric utilities in Alaska, and only 6 of those utilities are connected to each other through the

“Railbelt Grid” that serves the most populated areas of the state. The other 120 electric utilities provide electric power to approximately 30% of Alaska’s population that is spread out over millions of square miles. Usually the “one size fits all” approach to regulations does not work for my state.

Alaskans are concerned they will not have reliable, affordable electric service as a result of the NSPS rules. The utilities in my state face many challenges that utilities in the lower 48 do not face, such as the option to rely on an interconnected grid, and the availability of infrastructure and support services.

1. Would EPA consider providing a waiver to the NSPS rules for electric generating units/utility power plants not located in the contiguous United States?

## **2) Small Remote Incinerators**

I want to thank you for your continued efforts to work with the oil and gas and mining industries in Alaska on a new testing program for emissions from small remote incinerators (SRIs). The expectation is that the EPA will consider the emissions data from this program and revise the emissions limits for SRIs if warranted based on the new data. If the limits are not revised, no incinerator will be able to continue operating. For most of these incinerators there simply is no feasible alternative to incineration, or the alternative risks increased environmental damage or risks human and wildlife health and safety. For example, the only alternative for the Oooguruk oil field is to helicopter sling garbage hundreds of miles away to the closest landfill; and this would necessitate waste storage in polar bear habitat.

1. Do you acknowledge that there is no viable alternative to incineration for most, if not all, of the oil and gas and mining projects where SRIs are located?
2. Please explain why the Park Service may operate the same type of incinerators in Glacier Bay and Denali National Parks, yet they are exempt from emissions limits requirements?
3. Is the EPA’s intent to continue working with the oil and gas and mining industries on a new testing program for emissions from small remote

incinerators to sufficient data will be provided to warrant the EPA taking a second look at the emissions limits for SRIs?

4. Does the EPA still intend to consider emissions data from the new testing program and potentially revise the emission limits for SRIs?

### **3) Discharges From Offshore Fish Processors**

EPA currently requires that offshore catcher processors operating in federal waters off the coast of Alaska have a National Pollutant Discharge Elimination System (NPDES) Offshore Seafood Processors General Permit. This NPDES permit applies national effluent limitation guidelines requiring that no "pollutants" may be discharged which exceed ½ inch in any dimension. This standard dates back to 1975 and was developed for shore-based wastewater treatment plants, and applying it to fishing vessels at least three miles from shore never has made much sense. In fact, there is little, if any, measurable benefit to the environment. Instead, the offshore catcher processors have experienced significant difficulties in achieving the ½ inch in any dimension standard due to challenges with grinding fish skin, slime, muscle, cartilage and other internal organ fibers. As they have attempted to meet the standard by installing larger and larger grinders, their fuel consumption, costs and emissions have gone up, as have the risks for crew operating this dangerous equipment.

It is my understanding that staff in EPA's Office of Water and Region 10 are working with the freezer longline sector to determine whether to take this "fish grinding" requirement through the annual Effluent Limitations Guidelines review process.

1. Can you confirm that this review is proceeding expeditiously, and provide a timeline for the agency's decision on eliminating this permit requirement?

### **4) NPDES GP for Geotechnical Discharges/Arctic Oil and Gas Development**

In November 2013, the EPA released a draft National Pollutant Discharge Elimination System (NPDES) General Permit for geotechnical discharges associated with oil and gas activities off the coast of Alaska. Geotechnical work is a necessary precursor to development, and without coverage under the permit, operators cannot conduct critical soil surveys along potential pipeline routes and at

potential production facility locations. Unfortunately, the draft permit is completely unworkable, and forced at least one operator to cancel a geotechnical program planned for 2014. The comment period closed for the draft permit, with extensive comment detailing technical and logistical issues with it.

1. Is it the agency's intent to put out a revised draft permit for public comment that addresses those issues?

The draft permit incorporates monitoring and testing requirements (i.e., before, during, and after each borehole) that are similar to the requirements for drilling exploration oil wells. But this is a permit for geotechnical boring discharges.

2. Can you explain why the requirements for both activities are essentially the same even though the environmental impacts are significantly different?

The draft permit incorporates a whaling blackout throughout the Chukchi Sea in the spring and the Beaufort Sea in the fall, which goes beyond the recommendations of the Alaska Eskimo Whaling Commission.

3. Can you explain to me why the EPA went beyond what even the local subsistence users requested in terms of when geotechnical activities should not occur?

The draft permit applies only to geotechnical discharges associated with oil and gas activities in Alaska. Yet, this type of geotechnical work is routinely performed offshore in the U.S. for work relating to the development of offshore infrastructure for shipping, as well as for wind farms.

4. Does the EPA require the same sort of rigorous data collection for boreholes drilled for any other OCS purpose – wind farms, port infrastructure outside of state waters, etc? If not, what is the scientific basis for distinguishing between a borehole drilled for a pipeline or production facility survey versus a borehole drilled for any other purpose

## **5) Clean Water Act Rulemaking on Power Plant Water Intake Structures**

Ms. McCarthy, it has come to my attention that the EPA has initiated an Endangered Species Act (ESA) Section 7 consultation with the Fish and Wildlife Service and the National Marine Fisheries Service on the proposed rule regarding Section 316(b) of the Clean Water Act governing power plant cooling water intake



structures. I have been told the nuclear industry has raised concerns about the potential for the rule to be applied in an overly broad manner such that it could require facilities to install cooling towers or stop operations if a threatened or endangered species is located in a water body from which the facility draws water from, even if there is no evidence of impact to that species.

1. Do you believe the 316(b) proposed rule should require a power generator to monitor all species in a water body from which a facility draws water from or should the rule only focus on threatened and endangered species directly affected by the intake structure?

In the past, 316(b) monitoring focused on the prevention of “adverse environmental impact” of threatened and endangered aquatic life.

2. Do you believe the scope of monitoring should be expanded to look at species that may be in the water body and might be indirectly affected by intake structures?
3. Do you think it is appropriate to order a facility to install a cooling tower or stop operations if a threatened or endangered species is located in a water body from which the facility draws water from, when there is no evidence of impact to that species? If yes, should any consideration be given to the impact on electric reliability?

## **6) IG Report Concerning EPA Credit Card Abuse**

The EPA IG issued a report last month on March 4, and found that over half of the government credit card transactions by EPA employees were used for inappropriate personal expenses – such as gym memberships for friends and family, hotel rooms, and expensive meals. While the number of transactions that the IG looked at was rather small – 80 transactions totaling \$152,000 – agency employees as a whole spend roughly \$29 million on government credit cards. If anywhere close to half of these charges are inappropriate that is truly alarming.

1. What processes is EPA putting in place to correct this problem?

### **Questions from Senator Thad Cochran:**

Earlier this month, the Governor of Mississippi declared a state of emergency in 12 counties due to severe rain and flooding in the Pearl River Basin. In 1979, similar weather related events caused the Pearl River to flood the capitol city of Jackson, Mississippi, which resulted in damages equivalent to \$1.3 billion in today's terms. To date, Jackson doesn't have a comprehensive flood risk management solution and remains vulnerable to flood risk, despite many years of efforts between local leaders and the Army Corps of Engineers to develop an effective solution. Years and even decades may pass from the time the Corps is authorized to study a water-resources related problem and when the Corps actually constructs a project, and numerous Civil Works actions are subject to outside agency review, consultation or coordination. Additionally, it is my understanding that individual projects often take longer than anticipated due to disagreements between federal agencies. In your testimony you suggest the fiscal year 2015 budget request strengthens EPA partnerships with a focus on aligning resources, avoiding duplication, and closing gaps in the broader environmental enterprise system.

If Congress provides the amount of funding recommended to be appropriated by our Committee, will the EPA be able to do a better job working with the Corps of Engineers to streamline flood control projects and reduce inefficiencies and delays with regard to environmental regulations and requirements?

The Corps of Engineers has indicated the Jackson metropolitan area will remain vulnerable to flood risks as well as life and safety issues. Currently, the Pearl River is several feet above flood stage and is expected to rise. Given the current situation, would you be willing to work with the Corps of Engineers and the Rankin-Hinds Drainage Control District as they move to find a solution?

The Pesticide Registration Improvement Renewal Act was passed in 2012. It sets a minimum funding level required in order to allow EPA to collect registration service fees. However, sequestration combined with a continuing resolution has required Congress to waive the minimum level to allow the pesticide registration program to continue to operate.

Was EPA's guidance to the Congressional committees of jurisdiction on the decision timelines included in the PRIA reauthorization based on specific funding levels?

Has EPA been able to adhere to those timelines given the funding that has been provided for FY 2013 and FY 2014?

- a. How does this compare to actions under PRIA-I or PRIA-II?
  - b. What would be the impact of funding below \$128.3 million in future years? Please include impacts that address both inclusion and exclusion of a waiver of the minimum appropriation.
1. In 2012, EPA stated that as a result of beach grant funds the number of monitored beaches in the country has more than tripled. The President's budget proposes to eliminate categorical grants for the beach protection program. Given the current fiscal strain on state and local environmental agencies, what impact do you estimate the elimination of grant funds would have on the number of beaches monitored?
2. There is growing concerns from a variety of stakeholders about EPA's willingness to "Sue and Settle." It is my understand that Federal agencies including the EPA, the Fish and Wildlife Service (FWS), and the Department of Agriculture are opting not to appeal environmental lawsuits in an attempt to regulate rather than litigate. I am concerned settlements are being conducted without any transparency or public input. Often these settlements can yield new regulations imposing costly burden on agriculture, construction, manufacturing and other businesses. What is the number of lawsuits EPA has settled in the past year and how much EPA paid to resolve these lawsuits?
3. I have concerns with EPA's mishandling of sensitive information belonging to farmers and livestock producers. It is my understanding this wide spread problem affected 30 or more states. The EPA has a responsibility to protect the American citizens' personal information from government mismanagement. What safeguards has EPA implemented to make sure that the personal information of farmers and livestock producers is not inadvertently released again?
4. Section 12313 of the Agricultural Act of 2014 amends Section 402(I) of the Clean Water Act to reaffirm EPA's longstanding policy that Best Management Practices for forest-related activities are recognized and pollution discharge permits are not needed for stormwater runoff.

- a. Does EPA commit to implementing this provision as Congress intended?
  - b. In what, if any, circumstances would EPA disregard Congressional intent and in fact require this kind of permitting for forestry activities?
- 5. The EPA recently announced a proposed rule on waters of the United States that identifies exempted agricultural conservation practices not subject to Clean Water Act permitting.
  - a. Will this rule give EPA the authority to enter into negotiations with the Department of Agriculture related to the technical aspects of a conservation practice if a desired water quality benefit is not achieved?
  - b. Would this new rule give EPA new abilities to usurp the expertise of the Department of Agriculture with regard to conservation standards?

**Questions Submitted for the Record by Senator Reed, Chairman****Cutting the Workforce**

The Fiscal Year 2015 budget request proposes cutting EPA's workforce, which is a significant departure from prior years. This year the budget proposes a staffing level of 15,000. This is almost 1,600 fewer staff than you asked for last year and would result in the lowest agency staffing level since 1989. **Please outline EPA's plans for reshaping the workforce? What assurance is there that EPA will retain sufficient expertise to fulfill its mission?**

**Answer:** In the fall of 2013, the EPA began researching the use of voluntary retirement and separation authorities to streamline organizational practices and to realign our workforce to meet changing mission requirements in light of technological advances, resource constraints and limited hiring capacity. Nineteen of our regional and program offices began developing strategic, office-level proposals that formed the basis for Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Payment (VSIP) requests that were submitted to the Office of Personnel Management in late December 2013. Proposals emphasized streamlining administrative processes, consolidating functions to the greatest extent possible and, in some cases, updating the skill sets of our workforce. This agency-wide effort was undertaken strategically and with thoughtful consideration by all levels of leadership to ensure that critical expertise was retained while allowing the agency to increase efficiency, thus enhancing EPA's ability to meet its mission.

There seems to be a discrepancy in the Fiscal Year 2015 request between staff numbers that will decline and an operating budget that will increase. **Why does the Environmental Programs and Management account increase by \$113 million dollars if the overall number of employees will be reduced? If EPA isn't investing in its workforce, how will additional operating funds be used?**

**Answer:** The increase in EPM funds in the FY 2015 President's Budget is relative to the FY 2014 enacted level. Despite the reductions to the workforce, a portion of this increase is for additional payroll costs. Our FY 2015 request also invests in our workforce by supporting efforts to build a High Performing Organization (HPO). These efforts support our workforce by maximizing efficiency and allowing them to focus on the most important aspects of their work -- interacting with communities; problem solving by applying accessible and accurate data; and developing new approaches to emerging issues -- rather than working through process steps that add little value. This requires changing the way we do business through modernizing our work and taking advantage of advances in technology (e.g. applying software that allows more efficient learning events for all employees and reduces the number of redundant learning management systems). On the programmatic side, the additional EPM non-payroll funds requested will enable the Agency to make progress on priorities such as implementing priority water projects in communities, increasing outreach for brownfields projects to help ensure the success of these well received grants, improving data on watersheds to help enhance priority-setting, improving the coordination on chemical plant safety, and working with localities at risk for direct impacts from severe storms or other climate related events.

EPA has already started to reduce its workforce through an early buyout that offers incentives for voluntary separation from the Agency. **Are there particular groups of employees targeted for the buyout? Which programs are most heavily impacted? When reductions are completed, what will the smaller EPA look like?**

**Answer:** Nineteen of our regional and program offices developed strategic, office-level proposals that formed the basis for Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Payment (VSIP) requests that were submitted to the Office of Personnel Management in late December 2013. The proposals emphasized streamlining administrative processes, consolidating functions to the greatest extent possible and, in some cases, updating the skill sets of our workforce. Based on these proposals, the five occupational series most often identified to be authorized for VERA/VSIPs across the agency were Environmental Protection Specialist (0028), General Physical Science (1301), Environmental Engineering (0819), General Attorney (0905), and Management and Program Analyst (0343).

The programs with the highest acceptance rate of VERA/ VSIP offers were Superfund: Remedial, Superfund: Enforcement, Civil Enforcement, Surface Water Protection, and Compliance Monitoring. The impacts of these departures were considered in the proposals prepared by the regions and programs.

As a result of the VERA/ VSIPs, the EPA will be a more streamlined, efficient organization that is well-poised to take on today's challenges and those that present themselves in the future. The reductions achieved through the VERA/VSIPs are spread across nineteen regional and program offices; no single office lost a significant number of employees. Most offices are now or will soon be engaged in limited, strategic hiring efforts to obtain employees that possess needed skill sets, which will ensure that EPA maintains its scientific and technical edge, and enable the EPA to meet its mission requirements.

### **EPA Furloughs – Payroll Discrepancies**

One of the tough budget choices that EPA made last year was the decision to furlough EPA employees. Since that time, it has come to the subcommittee's attention that EPA had at least \$33 million dollars of unspent funds at the end of the fiscal year.

- 1. Please explain why EPA had unspent funds from fiscal year 2013 and why these funds weren't used to minimize the impact of the furlough on EPA employees?**

**Answer:** The agency continues to focus on timely use of appropriations to ensure that all funds are expended efficiently but also effectively to ensure the most environmental benefit. In many cases, (competitive grants or large contracts, for example) the nature of the work leads to 2-year appropriation funds being committed in the second year. Final calculations identifying the amounts and location of carryover were completed following the end of year closeout. However, the original need for those resources to support the agency mission remained.

In addition, to maintain the commitment to treating all employees equally, a One EPA

approach, the carryover would have to have been distributed in the appropriation and program projects aligned with the total payroll need. Lacking transfer authority and certainty on congressional approval for reprogramming requests as well as continued uncertainty concerning FY 2014 appropriation levels at that time, diverting these carryover funds to pay was very problematic and would not guarantee equitable furlough reductions.

**2. While it's not unusual for an agency to have some carryover funds, fiscal year 2013 was not a normal year. How did the agency make its spending decisions and determine funding priorities?**

**Answer:** Working within the appropriation, program area, and project levels provided following sequestration reductions, highly detailed analysis was conducted to balance payroll needs and critical support for the agency's mission with extramural resources. Based on this analysis, our commitment to treating employees equally with respect to furloughs, and the need to continue the work of the agency, the Acting Administrator made a decision concerning the maximum number of hours as well as a firm commitment to reevaluating that number at the midpoint to find any possible reductions made possible by savings in non-pay funds. Over the course of the furlough period, the maximum number was reduced on two occasions resulting in total agency furlough hours being a maximum of 47 per employee.

**3. How many hours of furlough could have been avoided with the unspent funds from fiscal year 2013?**

**Answer:** Without using congressional reprogrammings and having access to transfer authority, the EPA could not have avoided any hours of furlough with unspent funds from fiscal year 2013 while still maintaining its commitment to treating all employees equally. .

## **E-ENTERPRISE INITIATIVE**

EPA has proposed a major \$70 million dollar initiative, called E-Enterprise, to transition compliance reporting from paper to electronic web-based reporting. **What does EPA hope to achieve with the \$70 million dollar investment and what will its effect be on states and the regulated community?**

**Answer:** E-Enterprise is a broad strategy to modernize how EPA and its co-regulator partners do business, going far beyond the move from paper to web-based (electronic) reporting. The E-Enterprise business strategy will reduce the burden and impact of environmental regulations on regulated entities and Co-regulators (States, Tribes, and Territories) through applying LEAN management principles to programs, improving business processes and modernizing data flows. For FY 2015, the E-Enterprise Leadership Council (EELC), a joint governing body between the States and the EPA, identified \$70 million high-potential projects which align with the E-enterprise business strategy and are ripe for near-term investment. The majority of these funds are in existing

programs/projects, and are contained in EPA's base budget which supports critical functions within those programs. Examples are the Safe Drinking Water Information System (SDWIS), the National Pollutant Discharge Elimination System (NPDES), and e-Manifest in RCRA waste management.

Approximately \$19 million of the \$70 million has been identified by the EELC as new work with the immediate potential to significantly reduce burden on States and regulated entities. This includes grant resources to enable State (and Tribal) participation in E-Enterprise; development of the Regulatory and Public Portal for data exchange and transparency; and support for streamlining and modernization in a number of environmental programs through the use of shared services.

The Agency has established a new FY 2014-2015 Agency Priority Goal (APG) to improve environmental outcomes and enhance service to the regulated community and the public. The E-Enterprise strategy will help the Agency achieve these burden reduction goals through modernizing data flow processes (e.g. moving from paper-based to electronic reporting) while requiring no additional data to comply with existing regulations. For example, with the Hazardous Waste e-Manifest, burden reduction is estimated between 370,000 and 700,000 hours (and more than \$75 million) for States and the regulated community.

States are supportive of the e-Enterprise business strategy and are already engaging in E-Enterprise efforts. For example, Ohio EPA launched its electronic Discharge Monitoring Report Submission (eDMR) system<sup>1</sup>, which uses electronic reporting to allow permittees to report their discharge measurements quickly and easily online. This method of reporting has increased data quality (errors have dropped from 50,000 per month to 5,000), while also saving significant time and resources for all stakeholders. Ohio EPA reduced the number of reporting staff from 5 FTE to zero through the automated compliance tools and a positive ROI was achieved within 2 years.

Below are a few of many examples of stakeholder (e.g. states and the regulated community) comments expressing support for key pilot projects of the E-Enterprise business strategy including streamlining existing regulations in the Tier 3 Vehicles Emissions and Fuel Standards Program and the NPDES Electronic Reporting rule:

#### Marathon Petroleum Company

EPA has made regulatory streamlining a priority and we appreciate the Agency's efforts. We agree that regulatory streamlining will result in more efficient and less costly compliance. We support the elimination of unnecessary and outdated provisions. These provisions are independent of Tier 3 and should be promulgated in a final rule earlier than the Tier 3 final rule. We agree with the Agency that these are straightforward and should be implemented quickly. [EPA-420-R-14-004 p. 6-1]

#### Phillips 66 Company

We are appreciative of the effort to streamline various portions of existing regulations. With changes over time, there are several areas that need "clean-up" and this effort will reduce confusion and burden on the regulatory parties. We offer the following comments on the proposed

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<sup>1</sup> <http://www.epa.ohio.gov/dsw/edmr/eDMR.aspx>



revisions as well as suggestions for other provisions that we feel would add value and should be considered. [EPA-420-R-14-004, p. 6-2]

Change in reporting dates – Overall, the concept of aligning the various reporting dates and being able to develop a unified and simplified reporting form is a good one. Providing additional time is beneficial. We appreciate the Agency providing this change. [EPA-420-R-14-004, p. 6-13]

Massachusetts Water Resources Authority (MWRA)

MWRA appreciates that the proposed rule [NPDES Electronic Reporting Rule] will allow EPA to obtain, and provide to the public, a more complete picture of NPDES discharges – one that includes small as well as large discharges. Electronic data collection has the potential to reduce the errors in ICIS-NPDES and also allow errors to be corrected in a more timely way. In summary, MWRA generally supports the idea of phased-in electronic reporting, provided data can be accompanied by qualifying comments. Document No. EPA-HQ-OECA-2009-0274-0263-A2.

Metropolitan Sewer District of St. Louis (MSD)

In general MSD supports the purpose of the rule [NPDES Electronic Reporting Rule] in moving to electronic reporting for many NPDES related activities. We agree that electronic reporting will likely provide for better data recording and management by EPA and authorized states, tribes, or territories. Some portions of the proposed rule will also support communities like MSD in their continued efforts in transparency and to provide the public with uncomplicated access to quality information which is free of errors due to multiple data entry points. Document No. EPA-HQ-OECA-2009-0274-0364-A2.

North East Biosolids & Residuals Association (NEBRA)

We support the overall concept of the proposed rule [NPDES Electronic Reporting Rule] and agree that, if implemented thoroughly with considerable support, it might achieve the benefits stated in the *Federal Register* discussion. The increased availability of data would serve to enhance public understanding of wastewater treatment and biosolids management. NEBRA feels that the proposed rule merits further consideration, but that the details of the proposed electronic reporting system are critically important and will determine whether or not the system is a success. Document No. EPA-HQ-OECA-2009-0274-0288-A1.

United States Steel

U. S. Steel generally supports the rule [NPDES Electronic Reporting Rule] and its goals, such as publically sharing discharge information, improving the Agency's decision making capabilities, and enhancing Agency resources through minimizing expenditures for monthly reporting. Document No. EPA-HQ-OECA-2009-0274-0268-A2.

**How many years does EPA expect to request funding for the initiative? What is the total cost estimate and how does EPA expect to spread these costs over future budget cycles?**

**Answer:** Out-year requests are expected to be similar to current request levels. Investments in individual projects are expected to be recouped through the deployed business efficiencies.

Each budget cycle will include investments to transition the Agency and its co-regulator

partners to an updated customer and information-centric business strategy. In a phased implementation approach, a set of programs and projects are chosen for modernization and E-Enterprise supports the planning and development phases.

Aligning EPA's existing programs to the E-Enterprise business strategy will remain a priority for the EPA and states. In the out-years, individual projects will continue to be jointly selected by States and the EPA based on their potential for streamlining, modernization, and potential Return on Investment (ROI). Rather than EPA and States creating a particular capability several times over, the E-Enterprise strategy incorporates a "build once, use many" approach. As individual projects are completed, resources shift to the next priority. Once program systems have been modernized, the program offices manage the ongoing operations and maintenance (O&M) of the systems at a reduced cost for the participating co-regulators than would otherwise have been possible, allowing resources to be used for program implementation. The additional benefits from increasing transparency and improving customer service to stakeholders provide additional value.

Under the E-Enterprise strategy, investments in individual projects have individual value. While priorities will change annually within the overarching E-Enterprise strategy as determined by the co-regulator partners, individual projects that have been completed will continue to operate and provide value.

The budget request discusses the potential cost savings that the regulated community will realize through electronic reporting. **Please share details about anticipated savings and, if funding is provided in FY 2015, when is it anticipated that the initiative be fully operational?**

**Answer:** Savings under the E-Enterprise business strategy to the regulated community can be measured in time and resources that will be reduced (e.g. burden reduction) through streamlined regulations and implementation of individual projects. The streamlining of regulations, shared State and EPA information reporting approaches, and moving from paper-based to electronic reporting will result in significant burden reduction. The agency has a commitment of one million hours of burden reduction in one of its FY 2015 Agency Priority Goals. Examples of burden reduction and cost savings estimated for key projects coordinated under the E-Enterprise strategy include the following:

- Safe Drinking Water System (SDWIS) - 910,000 hours of burden reduction for States, 80,000 hours for Public Water Systems and Labs
- National Pollutant Discharge Elimination System (NPDES) e-reporting Rule - 914,000 hours of burden reduction, \$28.5M savings for States, \$1.1M savings for permittees, EPA savings of \$0.7M

The E-Enterprise strategy will cover a series of programs and projects, each of which is designed to be modular with regular milestone deployments. Smaller projects can be fully operational within 1-2 years; projects of larger scope will operational within 3-5 years. Some projects are already underway such as SDWIS and NPDES mentioned above. The intent is for E-Enterprise to continually improve the full range of EPA's environmental programs and projects. The EPA, states, tribes, and territories have a set of legacy information systems to be transitioned and integrated without interruption in service. All programs/projects will undergo an alternatives

analysis and business case with a return on investment (ROI) study to determine the cost-effectiveness of proposed changes to the investment.

U.S. House of Representatives  
Committee on Appropriations  
Subcommittee on Interior, Environment, and Related Agencies  
Budget Hearing: Environmental Protection Agency  
March 27, 2014  
2359 Rayburn HOB

Questions for the Record -- Administrator

Questions from Mr. Calvert

**Waters of the United States/ "Navigable Waters"**

The rule recently proposed by EPA on Waters of the United States would expand the ability of the Federal government to regulate nearly every water body in the United States. Where previously there were questions about the role of States vs. the Federal government in ensuring clean waterways, EPA's rule proposes to eliminate many of those questions. The certainty EPA claims the rule offers is the certainty that EPA will assert its control over State's rights and require more Federal permits. It is often one thing to share two different perspectives on a policy. However, EPA's claim that *"the proposed rule will not add to or expand the scope of waters historically protected under the Clean Water Act"* is entirely misleading. The only way that EPA can justify this claim is by assuming that Supreme Court decisions in 2001 and 2006 never happened. Prior to those court decisions, EPA believed it had the jurisdiction to regulate nearly every water body under the Clean Water Act. When the Supreme Court disagreed, EPA was forced to re-evaluate the State role with respect to water rights. That is why it is unfortunate that this proposal proves to be the greatest bureaucratic expansion of Federal control over land and water resources in the 42-year history of the Clean Water Act. The amount of acreage subject to EPA's jurisdiction will expand exponentially as more waterways are subject to permitting, and the amount of uncertainty and the lack of prepared cost estimates associated with this rule are alarming.

While the Agency has stated that the rule would not be issued until the Connectivity study has been finalized, however the Connectivity study has yet to be peer-reviewed by the Science Advisory Board.

**Calvert Q1:** Is it important for the Agency's regulatory promulgation to be based on science? If so, what is the justification for moving forward with the expansion of the scope of Waters of the U.S. before the Connectivity Study is completed and undergone peer review?

**Calvert Q2:** There is no doubt that a definition of the Kennedy test of significant nexus is extremely difficult to define. Has the Agency considered contracting with an outside body such as the National Academy of Sciences to assist EPA in scientifically defining how the federal government should define "connectivity" or a "significant nexus" between waters? If so, what was the result of those discussions?

While the stated intent of the proposed rule is to minimize uncertainty of interpretation of federal

authority under the Section 404 wetlands permitting program, it seems that it will increase uncertainty for other Clean Water Act programs.

**Calvert Q3:** What is the process by which EPA and the Corps will follow to initiate a significant nexus test? Can anyone request a jurisdictional determination? Will the owner/operator need to ask for a jurisdictional determination? Will a permit need to be requested?

**Calvert Q4:** What is the estimate of the additional resources, both in funding and in staffing, that will be needed to administer and enforce this rule?

**Calvert Q5:** What is the Agency's, or the Corps', estimate for how many additional permits will be issued under the rule?

**Calvert Q6:** The proposed rule defines all waters within a floodplain or a riparian area as waters of the U.S.; however, the rule does not clearly define what the boundaries would be of a floodplain or a riparian area. Recognizing that FEMA spends over \$100 million each year mapping floodplains, and that no federal agency maps riparian areas, what resources does EPA have to map these areas? What will the costs be to EPA if you chose to designate floodplains differently than FEMA's 100-year floodplain?

**Calvert Q7:** The proposed rule defines all tributaries as waters of the U.S. Federal and state governments operate water delivery systems such as the Central Arizona Project, the Central Utah Project, the California Aqueduct, and the Colorado River Aqueduct that clearly fit the rule's proposed definition as a tributary since they have a bed, a bank, an ordinary high water mark, and they conduct flow to other waters of the U.S. What will be the impact of this proposed rule on these water delivery systems? What will be the cost implications to yours and other federal agencies that must regulate these systems as waters of the U.S.?

### **Diesel Emissions Reductions (DERA) Grants**

The DERA program is a successful, bi-partisan program that initially started with the replacement of school bus engines under the Clean School Bus program. It expanded to include the retrofitting of many other diesel engines, including construction equipment.

In 2012 the Administration proposed to eliminate the diesel emissions grants, or DERA grants. This proposal was met with significant opposition as the program provides \$13 of economic benefit per Federal dollar, the retrofit technology supported by DERA reduces black carbon emissions by 90 percent and projections estimate that nearly 2,000 lives will be saved by 2017 as a result of this funding. The program has achieved real pollution reductions without the need for heavy-handed, top-down regulations along with the ability to leverage private investment three-to-one. Ultimately DERA funding was restored to \$30 million in the 2012 bill. Last year, the Administration proposed to cut the grants to \$6 million and the Omnibus restored the funding to \$20 million. Here again in fiscal year 2015 the Administration proposes to eliminate the program.

**Calvert Q8:** Given the large demand for these grants and the lower fleet turnover, why has the Administration proposed to eliminate the program in FY2015?

At least \$2 million annually has been used for a demonstration of the rebate authority for school bus replacements. This was highly successful and EPA had roughly 1,000 applications submitted in fiscal year 2012.

**Calvert Q9:** In what way is the rebate model a more efficient or preferred approach to the old system of direct grants to states?

### **Stormwater**

The 2013 proposed updated MSGP permit seems to indicate that the Agency is moving away from using the traditional best management practice methodology and encouraging the use of numeric effluent limits. Many permitted businesses have expressed serious concerns with this national movement. Also, Individual state permitting authorities have indicated that EPA headquarters has encouraged them to adopt numeric effluent limits instead of relying on BMPs to control stormwater pollutants.

**Calvert Q10:** Can you please comment on the proposed permit? What is EPA's plan for continued measurement of stormwater pollutants under the National Pollutant Discharge Elimination System (NPDES)?

**Calvert Q11:** EPA has recently proposed to require NPDES- regulated industries to submit stormwater permits electronically to permitting authorities. What safeguards is EPA considering to ensure that this data, which will be available to the public, is not used to fuel frivolous legal action?

**Calvert Q12:** In the proposed electronic reporting rule the Agency offered the possibility of a second rulemaking to address these very concerns. What is the status?

**Calvert Q13:** When Agencies enter into voluntary settlement agreements with private parties to issue specific rulemaking requirements, the practice severely undercuts public participation in the process. What voice does the public have prior to EPA agreeing to the terms of a settlement agreement, and does the Agency believe that this is sufficient? How does the Agency ensure public participation under the terms of a settlement agreement?

### **Bristol Bay/Pebble Mine Watershed Study**

For the past few years the Committee had been asking for information -- for a table -- that shows how much the Agency has spent on the Pebble Mine/Bristol Bay watershed study. This study was not directed by Congress and the Agency had not requested funding from Congress to conduct the study. Last year EPA provided a table in response to questions for the record, indicating that \$2.4 million had been spent between fiscal year 2011 and 2013 on the watershed assessment.

The Agency's response also indicated that budget requests from fiscal year 2011 to 2014 did not explicitly identify resource levels for the Bristol Bay work. The Agency response also indicated that since the project was funded within existing authority and appropriated funding, that EPA did not need to identify an offset or request a reprogramming from Congress in order to undertake the work.

**Calvert Q14:** The budget justification highlights the amount of funding for several other studies and funding for hundreds of other activities. Why has this study not been identified in prior budget justifications? Why has this study been treated differently from those other programs?

**Calvert Q15:** How much funding has been spent in fiscal year 2014 on the Bristol Bay assessment? Please provide an update to the table that the Agency provided for the record last year that includes any FY14 amounts?

**Calvert Q16:** Has the Agency requested funding in the fiscal year 2015 budget for the Bristol Bay assessment? If so, please provide a reference to where the funding is requested in the FY15 congressional justification.

### **Hydraulic Fracturing Study**

There is concern that the hydraulic fracturing study that EPA has been working on now for over four years has gone beyond Congressional intent and has expanded in scope. The request from this Subcommittee in FY 2010 was for EPA to determine whether there is a link between hydraulic fracturing and drinking water. Yet four years and \$25 million later, the Agency has developed several new research areas and may have more than thirty separate reports as part of this study. Rather than a study, this now seems to be an entire research program within the Office of Research and Development.

**Calvert Q17:** EPA's FY 2015 budget requests an additional \$6.1 million for the study to determine whether there is a relationship between drinking water and hydraulic fracturing. Why is the \$25 million that EPA has received to date an inadequate amount to complete the study?

**Calvert Q18:** If the draft study is expected to be released in December 2014, then EPA's primary responsibility will be to respond to comments in FY15. Will it require \$6.1 million to respond to comments?

**Calvert Q19:** In FY 2010, the subcommittee requested two other studies that were both completed within two years and for less than \$1 million each. Those were also complex studies on Black Carbon and on the economic impacts of the Category 3 Marine rule on the Great Lakes. Why has this hydraulic fracturing study been so much more expensive for the American taxpayer and taken twice as long?

There is also concern that the study will be released before there is a peer review by the Science Advisory Board. It is my understanding that EPA plans to release the study to the public at the same time it is submitted for peer review.

**Calvert Q20:** What is the current timeframe for the SAB peer review and for the release of the study?

### **Rural Water Technical Assistance Grants**

The 2012 Omnibus included \$15 million to establish a competitive grant program wherein entities that provide technical assistance to small or rural water utilities, or to private well owners, have an opportunity to compete for funds to assist these communities with understanding and complying with EPA water regulations. EPA has not included funding in the President's budget for these grants, and it seems that the Administration is prioritizing accelerated regulation over working with communities to understand their needs and challenges. It also seems like the Administration is cutting successful, bi-partisan programs knowing that Congress will restore the funding. In doing so, this allows the Administration to propose other new programs that we just don't have the funding to pay for in a constrained budget environment.

**Calvert Q21:** Why it is not a top priority for the Administration to fund these technical assistance programs that help communities keep up with, and understand the impacts and requirements in the EPA's water regulations, particularly as the Agency continues to propose more regulations?

### **e-Enterprise and e-Manifest**

In order to assist in the workforce transition, EPA has proposed a \$61 million e-Enterprise initiative, which offers a menu of technological options for increasing efficiency with States and the regulated community. The Subcommittee will want to hear from both the States and business community in order to better understand how this initiative may help them reduce their reporting burden and meet various legal requirements. It is also critical that Congress understands the three- or five- year plan for these investments.

**Calvert Q22:** In a constrained environment, what may be the top two or three e-Enterprise projects that would produce the greatest immediate return on investment? In what ways would States, EPA or the regulated community realize those benefits?

**Calvert Q23:** The e-Manifest system will significantly reduce paper recordkeeping costs in the regulated community for hazardous wastes by relying on an electronic tracking system similar to what UPS and FedEx have been using for years. It is a program that should have been built long ago. However, there have always been concerns about the cost and how to pay for it. The budget proposes \$10.4 million to build the system, which is greater than the original EPA estimates for the entire cost of the program (original estimate: \$6-8 million). Please explain why the program is already over budget in year two?

**Calvert Q24:** In fiscal year 2013, the Subcommittee approved a reprogramming to initiate work on the e-Manifest project. EPA's Congressional Justification shows that no expenditures were logged in fiscal year 2013. Why was a reprogramming necessary in fiscal year 2013 if the Agency did not intend to spend those funds?



### **e-Enterprise and Enforcement**

EPA's budget documents indicate that the Agency is "pursuing justice" for Gulf residents and EPA actions have resulted in civil penalties to "punish misconduct". This offers a window of insight into EPA's view of its relationship with the public. The Agency also notes EPA collected \$2.6 billion in penalties, the highest amount ever despite fewer inspections and civil case initiations, which the Agency attributes to budget cuts. Nevertheless EPA's enforcement budget proposes 76 fewer FTE along with a \$22 million increase largely for e-Enterprise activities.

**Calvert Q25:** On one hand this proposal reflects EPA's use of technology to increase the efficiency of EPA personnel through the e-Enterprise initiative. However, others may view the e-Enterprise initiative as an initiative to increase enforcement actions. Have regulated entities expressed support for components of the e-Enterprise initiative, beyond the broad support for the e-Manifest system? If so, please provide any letters of support or other correspondence for the record.

### **Monthly Reports on Section 404 Permits**

The Fiscal Year 2014 Omnibus directed EPA to report monthly on the number of Section 404 permits under EPA's review including the date received, the number of days each permit has been under review, the "DA number", the permittee, the project name, the permit type, geographical information (county and State), and where action was taken on a permit the report should include disposition of each permit, and the date issued or remanded. The information requested aligned with a table the Agency provided following the FY13 budget hearing when a table was requested by the Committee. Nevertheless, the Agency has yet to submit the required reports for February and March.

**Calvert Q26:** Why has the Agency failed to meet the deadlines for February and March, and when will the Agency submit the required reports?

**Calvert Q27:** Please provide for the record all monthly reports due to the Committee that have not been submitted as of the time of EPA's response to questions for the record.

### **Formaldehyde Rule/Regulation**

**Calvert Q28:** What is the anticipated timing for completing work on the regulations for Formaldehyde emissions in composite wood products?

**Calvert Q29:** Is the Agency's intention to harmonize EPA regulations with the California Air Resources Board (CARB) with respect to laminated products as directed by Congress? If so, why did EPA's initial proposal include laminators when California expressly exempts laminators?

**Calvert Q30:** Can the Agency assure this Subcommittee that EPA's final formaldehyde rule will not be overly burdensome to laminators?

### **Radon State Grants**

Tough choices need to be made when crafting a budget; however, the proposal to terminate the Radon program grants warrants a second look particularly when 21,000 lung cancer deaths are attributed annually to radon exposure.

**Calvert Q31:** Why has the Administration again proposed this grant program for termination?

**Calvert Q32:** If States are capable of handling delegated responsibilities for this program within their budgets, why is there a \$21.5 million increase for grants to fund base state air programs, and a \$25 million increase for state water programs? There seems to be a disconnect in the Agency's view that States have ample budgets to handle some programs but not others.

### **New Las Vegas Office Building**

The budget re-proposes a \$12 million increase to design a new building in Las Vegas to consolidate EPA's personnel. EPA's lease with UNLV is set to expire in 2015, and it is unlikely that it will be renewed. As such, EPA needs to find other space for its lab personnel. While there is a great deal of unused commercial space in Las Vegas, the Agency proposes to build a new building.

**Calvert Q33:** The \$12 million requested for FY15 is simply to design the building. What are the anticipated construction costs?

**Calvert Q34:** Why propose new construction rather than reusing existing, available space?

**Calvert Q35:** Was this a recommendation included in EPA's lab study?

### **Superfund Budget**

The 2015 budget proposes \$1.16 billion for the Superfund program, which includes a \$43.4 million increase for the cleanup programs. With this funding, the budget justification indicates that funding would initiate cleanup construction work on four to six construction projects. That would still leave 30 sites unfunded at the end of fiscal year 2015. By definition, these are the most toxic sites in the United States, so it is important that we clean these up.

**Calvert Q36:** Has the Agency developed estimates for what level of funding is necessary to initiate cleanup at all the unfunded sites that stand ready for cleanup?

### **State Cost Share for EPA Grants**

Currently States are required to provide a 20% match to grants from the Clean Water and Drinking Water State Revolving Funds, a 25% match for Alaska Native Villages and other water related implementation grants, a 40% match for most air and radon grants, and a 50% match for pesticide program implementation and pollution prevention grants.

**Calvert Q37:** Clearly this is an outgrowth from multiple authorizing statutes enacted at various different times. From the Agency's vantage point, what are the potential pitfalls associated with harmonizing the required state match for EPA STAG grants?

### **IRIS Assessment of Inorganic Arsenic**

The Consolidated Appropriations Act for 2012 directed the Agency to contract with the National Academy of Sciences (NAS) for a study of the cancer and non-cancer hazards from oral exposure to inorganic arsenic. Pursuant to that directive, EPA contracted with the NAS to provide advice to the Agency on the approach proposed for its hazard assessment of inorganic arsenic and then to conduct a peer review of the ultimate IRIS assessment. The NAS published its interim report on November 7, 2013 entitled, "Critical Aspects of EPA's IRIS Assessment of Inorganic Arsenic".

**Calvert Q38:** The NAS Interim Report recommends a data-driven approach for assessing multiple health effects of inorganic arsenic as opposed to the Agency's typical default approaches. In using a 'data-driven' approach, does the Agency agree that the IRIS assessment should consider all available and defensible evidence, including recent research papers, and not just data compiled by a date certain?

**Calvert Q39:** Does the Agency agree that recent scientific evidence exists for the finding of a safe threshold for low dose exposure to inorganic arsenic, particularly for cancer effects?

**Calvert Q40:** The NAS 2008 Report: "Science and Decisions: Advancing Risk Assessment", frequently referred to as the "Silver Book" recommended that EPA consider the regulatory impacts of its IRIS hazard assessments. The proposed 2010 IRIS assessment for inorganic arsenic would have driven regulatory standards below naturally occurring background levels in soil and water. At the time, many within and outside EPA were highly critical of the proposed increase in the cancer slope for inorganic arsenic. The Committee continues to be concerned that EPA's IRIS assessments should consider the "real world" regulatory and risk management implications of its hazard assessments. Will the reforms of the IRIS program result in more realistic risk values, particularly for inorganic arsenic?

**Calvert Q41:** What is the current projected date for posting of the draft IRIS assessment of inorganic arsenic for public review and comment?

### **IRIS Assessment of Formaldehyde**

**Calvert Q42:** It is our understanding that EPA is organizing a workshop on formaldehyde to address critical science issues prior to the issuance of the revised IRIS assessment for formaldehyde. We/I applaud this effort to meet the directive laid out in Chapter 7 of the National Academy of Sciences report on the prior formaldehyde IRIS assessment, which made clear that "strengthened, more integrative and more transparent discussions of weight of the evidence are needed." What is EPA doing to ensure that this workshop leads to actionable results that can support an improved, science-based assessment that balances all of the available

evidence? For example, has your staff been able to secure the participation of the key experts in the areas to be discussed? Will the proceedings be made public?

**Calvert Q43:** Given the importance of the formaldehyde IRIS assessment as a test case for IRIS reform, would EPA be receptive to contracting with the National Academy of Sciences to conduct a review of the revised draft IRIS assessment of formaldehyde to ensure that the NAS's 2011 recommendations on an earlier draft of the assessment have been fully addressed?

**Calvert Q44:** Given that the formaldehyde assessment is in a unique position with regard to the timing set out in EPA's proposed stopping rules, will EPA continue to accept and consider new data through the comment period for the revised IRIS assessment?

### **Design for the Environment (DfE)**

**Calvert Q45:** EPA's Design for the Environment program, which seeks to characterize certain chemicals and products as not just safe, but "safer". How is EPA planning to align the non-regulatory DfE labeling program with its regulatory function?

**Calvert Q46:** DfE's product ecolabeling program encourages the reformulation of certain consumer products, but perhaps without regard to society-wide impacts on clean air and water if products as they are made differently. How does EPA consider the full environmental impacts of "safer" or "greener" products, and that net impacts on human health and the environment are in fact lower?

### **New Source Performance Standards and CCS**

In the proposed New Source Performance Standard rule for new electricity plants, the Agency states that the proposed standard for a new natural gas combined cycle power plant (1000 pounds of CO<sub>2</sub> per megawatt hour) is being met by over 90% of those types of plants in operation today.

**Calvert Q47:** How many coal power plants in operation today can meet the proposed standard (1100 pounds of CO<sub>2</sub> per megawatt hour) for new coal power plant?

In previous EPA testimony, the Agency says the proposed standards for a new coal power plant "reflect the *demonstrated performance* of efficient, low carbon technologies that are currently being used today."

**Calvert Q48:** Are there any full scale coal power plants currently operating in the US that are using Carbon Capture and Sequestration (CCS) technology?

**Calvert Q49:** To be clear, while CCS components have been developed, are there any electric generating plants using a fully integrated CCS system in practice. If not, how does the Agency explain proposing a standard without knowing whether it is achievable in practice?

**Calvert Q50:** When EPA evaluated whether the costs of electricity from a new power plant using CCS is reasonable, did EPA rely on the cost of the technology at its current status as an

emerging technology for power plants or what the costs are projected to be when CCS reaches the status as a fully mature technology?

**Calvert Q51:** Is there a difference in cost between CCS in its current status and when it reaches status as a fully mature technology?

**Calvert Q52:** The Department of Energy testified recently that early stage deployment of CCS for new power plants would increase the costs of wholesale electricity by approximately “70 to 80 percent.” This testimony came from Mr. Julio Friedmann, Deputy Assistant Secretary who is an expert in CCS technologies. What has the Department of Energy told EPA about how long will it be before CCS is considered a fully mature technology and cost competitive for power plants?

### **Perchlorate**

It is the Committee’s understanding that the EPA Office of Water continues to pursue the establishment of a maximum contaminant level for perchlorate under the Safe Drinking Water Act despite the National Academy of Sciences determination that exposure to perchlorate at environmental levels has little to no effect on humans and previously Agency determinations (OW and OIG) that perchlorate fails to meet the criteria for regulation under the Safe Drinking Water Act.

**Calvert Q53:** Please describe for the Committee, the Office of Water’s ongoing activities related to perchlorate in fiscal year 2014 and those related activities proposed within the FY2015 budget, including those activities that assist communities with known perchlorate exposures as well as any efforts to revise the reference dose or promulgate additional regulations.

### **Pesticide Registrations**

The Pesticide Registration Improvement Renewal Act of 2012 increased the minimum appropriated funding level required in order to allow EPA to collect registration service fees. However, since then the Committee has waived the minimum level to allow the pesticide program to continue to collect fees under tighter budgets.

**Calvert Q54:** Under the 2012 Act, what is the expectation for the percentage of the program that would be funded through appropriations vs. the percentage of the program funded through fees? Please provide a table with an annual breakdown. Please also include the actual percentages for FY13 and FY14 based on the final appropriations and fees collected. Please also include the proposed percentage under the FY15 President’s budget.

**Calvert Q55:** Has EPA been able to meet the timelines for pesticide review included in the PRIA reauthorization? How does this compare to actions under PRIA-I or PRIA-II?

**Calvert Q56:** What were the minimum appropriation levels required under PRIA-I and PRIA-II?

## **Title 42 Authority**

EPA budget documents indicate that 23 Title 42 employees are on-board with an additional 12 recruitments underway.

**Calvert Q57:** When does the Agency estimate that all 12 recruitments will be on-board?

**Calvert Q58:** How does EPA's use of Title 42 authority compare and contrast to other agencies that utilize special Title 42 authority?

## **EPEAT**

EPA established the Electronic Product Environmental Assessment Tool (EPEAT) to serve a limited, but useful purpose: to allow federal purchasing managers to evaluate the relative environmental benefits of various information and communications technology products in order to make informed procurement decisions on product energy use and sustainability. Two Executive Orders and the Federal Acquisition Regulation stipulate that 95% of federal purchases of eligible products must be of devices included on the EPEAT registry. Over \$60 billion of federal contracts are affected. However, the organization which runs the program is neither in the government or run by industry.

**Calvert Q59:** Please explain how the EPA established the EPEAT tool with the Green Electronics Council of Portland, Oregon, how the EPEAT process works, and what EPA does on a daily basis to approve in advance the standards that the Council adopts?

**Calvert Q60:** Does EPA periodically examine alternate mechanisms or organizations in a competitive manner to identify the best service provider?

**Calvert Q61:** How much does the Green Electronics Council receive annually from EPA and is this funding provided consistent with EPA's competition policies?

**Calvert Q62:** What right of ownership does EPA have with respect to the EPEAT tool if the Council has trademarked the EPEAT tool?

**Calvert Q63:** What processes does the Green Electronics Council use to garner input from U.S. companies, and how does EPA participate in them? Does EPA arbitrate disputes between the Council and other partners?

**Calvert Q64:** The National Technology Transfer and Technology Act and OMB Circular A-119 require use of "open, consensus based standards" for federal purchasing decisions. Does the Agency affirm that the standards that the Council adopts are "open" and "consensus based" as required by law? Is the ultimate decision authority of the Council with respect to which standards and products it allows on its registry conformant with the NTTTA and OMB A-119?

### **Geographic Program**

EPA has proposed new language to implement projects in the Southern New England Estuary program.

**Calvert Q65:** Please explain what limitations currently exist and why this language is necessary.

### **Buy American**

The FY 2015 President's budget proposes to remove the Buy American requirements for the Use of iron and steel in SRF projects. However, the Agency's budget documents do not seem to address this change in law.

**Calvert Q66:** Please provide the Administration's position for the proposal to remove these requirements for FY15.

### **Payroll and FTE**

**Calvert Q67:** What percent of the workforces are Grade 14s, 15s and SES and how does that compare to other Federal Agencies of similar size and mission?

**Calvert Q68:** How does the proposed level of \$57.2 million and 321.5 FTE for the EPA Inspector General compare to the size of the Offices of Inspectors General at the Department of Interior, Department of Agriculture, NASA and their respective budgets for fiscal year 2014 and 2015?

**Calvert Q69:** EPA's payroll request, Agency-wide is \$2.245 billion for 15,000 FTE. That is an average of \$149,633 per FTE. Is this the correct amount assumed in the budget per FTE? If not, provide the correct average and please explain the difference.

### **Administrator Priorities**

**Calvert Q70:** The FY14 Omnibus directed EPA in future budget justifications to identify funding in each program project that has been set aside for Administrator priorities and include a justification for the effort and any anticipated results. Does EPA's FY15 congressional justification comply with the requirement? If so, where are these funds identified?

### **Proposed Rescission**

**Calvert Q71:** The FY15 budget proposes a \$5 million rescission of STAG unobligated balances. EPA's budget justification notes that these funds originate from Congressional designated projects that are complete and the grantee has returned the funds. Please provide a table of with the name of the projects including the year appropriated, the original sponsor, the year the project was completed, the year funds were returned and the amount returned.

### **Voluntary Programs**

**Calvert Q72:** For the record, please provide a list of what EPA considers to be “voluntary programs” and their fiscal year 2014 and FY 2015 proposed budgets. Please also include the Agency’s definition of a “voluntary program”.

#### **Coal Ash**

**Calvert Q73:** What is the Agency’s current timeframe for a revised determination on the treatment of coal ash under RCRA?

#### **Lead in Ammunition or Fishing tackle**

**Calvert Q74:** What is the Agency’s current timeframe for a proposing a rule to regulate the lead content of ammunition or fishing tackle?

#### **UST Annual Inspections**

**Calvert Q75:** The Energy Policy Act of 2005 mandated that EPA and State inspect all underground storage tanks once every 3 years. Have EPA and the States been meeting this requirement? If not, please provide a list of States that currently do not meet the 3 year requirement and the frequency by which they are currently inspecting their universe of tanks.

#### **State Formulas/Allocations**

**Calvert Q76:** If EPA is proposing to change any programmatic formula or allocation by which funds are distributed to States, then please provide a list of proposed changes for the record.

#### **Cleanup of Federal Hazardous Waste Sites**

**Calvert Q77:** It has been a few years since the Committee has inquired about the progress of negotiations with the Department of Defense on the cleanup of hazardous waste sites. Please provide an update on any recent Federal Facility Agreements (FFAs) with the DOD or DOE as well as a summary of progress on the ongoing work to cleanup sites at Federal facilities.

#### **Guam Water and Wastewater Needs**

**Calvert Q78:** What are the Agency’s latest estimates for water and wastewater infrastructure needs on Guam and how does the fiscal year 2015 President’s budget propose to address those needs?

#### **Restrictions on Communication with Outside Parties**

OECA’s March 8, 2006 memorandum on “Restrictions on Communicating with Outside Parties Regarding Enforcement Actions” outlines the procedures and policy restrictions for Agency staff to follow with respect to the sharing of information related to enforcement actions, including



communications with Congress. EPA has traditionally directed employees to not disclose information that will interfere with the proceedings.

It has been brought to the Committee's attention that EPA has shared information regarding the status of civil actions and investigations with certain Congressional members and staff prior to notifying companies. Further, EPA officials provided a letter summarizing the results of an Agency audit to Congressional staff prior to providing those results to the company. Congressional staff then released this information to outside entities. This information suggests that some Agency officials may be acting in a manner contrary to those restrictions outlined in the 2006 memorandum. This is of particular concern to the Committee as unauthorized disclosures prior to a final determination could be prejudicial or promote controversy. Further, given the sensitivities associated with proposed enforcement actions such actions foster an adversarial relationship rather than a collaborative approach to voluntarily address Agency concerns.

**Calvert Q79:** Would the actions as described above constitute a violation of EPA's policy on communication with outside parties regarding enforcement actions?

**Calvert Q80:** Is the aforementioned 2006 memorandum still the governing document that represents EPA's policies on communication with outside parties regarding enforcement actions? Or have there been subsequent updates to the 2006 memorandum?

**Calvert Q81:** Was 2006 the last time that the memorandum was circulated to EPA staff? If so, would the Agency commit to recirculating the memorandum as a reminder of Agency policy?

## Questions from Mr. Simpson

### **Waters of the U.S.**

Administrator McCarthy, it should come as no surprise that, like Chairman Rogers and Chairman Calvert, I am deeply concerned about the proposed rule that you released on Tuesday expanding the EPA's jurisdiction under the Clean Water Act. I am vehemently opposed to the federal government threatening state sovereignty by claiming jurisdiction over waters that are currently regulated by the state. In Idaho, we call that a declaration of war.

In addition, frankly, I cannot understand why you would decide to issue a proposed rule before the scientific review of the connection between water bodies is complete. That alone leaves me in doubt as to whether this rule has any scientific validity.

**Simpson Q1:** Why would you draft, much less publish, a proposed rule before the research is complete?

One of my biggest concerns over redefining "waters of the U.S." is the impact that expanding the federal government's jurisdiction over water will have on farmers and ranchers. If you could, would you clarify a couple of matters for me:

**Simpson Q2:** The list of agricultural exemptions that EPA has released only applies to Section 404 (dredge and fill) of the Clean Water Act. Is that correct?

**Simpson Q3:** Why are you doing these in an interpretive rule as opposed to including them in the regulation itself?

**Simpson Q4:** As I understand it, these 'exemptions' can be revisited at any time by the agency and be either narrowed or even repealed. Is that the case?

**Simpson Q5:** As I understand it, a farmer engaging in these normal activities would have it adhere to NRCS standards in order to avail himself or herself of the exemption. Is that true? Has that always been true? If not, isn't it a fact that you are establishing a new Federal requirement for farmers to be able to use the 404 exemptions?

There is a wide range of agricultural activities that are not related to dredge and fill - applying pesticides, for instance. As I understand your proposal, the list of exemptions does not deal at all with NPDES permit requirements that arise in section 402 of the Act.

**Simpson Q6:** If these areas – ditches, grass waterways and others – are 'waters of the US' under your proposal, isn't it true that farmers are going to need NPDES permits for these activities?

**Simpson Q7:** If a ditch or a grass waterway on a farmer's property is a 'water of the US,' is it true that any activity falling outside the 404 exemption list could be subject to a 402 permit, assuming it is a discharge?

## **State Primacy**

As you know, the state of Idaho recently passed legislation that will eventually lead to the state claiming primacy on the Clean Water Act. The state will spend millions on the multi-year transition to primacy, and once it gains primacy it will spend millions each year on its program. I am told that no federal funds exist to assist the state with the transition or with the ongoing program once it is up and running.

**Simpson Q8:** So I guess my question is this - if a state is going to spend millions to run a program now run by the EPA, and is going to hire dozens of people to handle a program now run by federal employees, why are there no savings to your agency and why is there no assistance to the state in running the program? Help me understand why the federal program doesn't shrink at the same time that the state program grows? And if it does shrink, why aren't some of the savings made available to states taking on this responsibility?

## **Stormwater**

In June 2012, EPA released the Integrated Municipal Stormwater and Wastewater Planning Approach Framework that laid out a new model to help communities meet their regulatory obligations under the Clean Water Act (CWA) in an integrated manner. If successfully implemented, this model could help communities more affordably manage their clean water obligations while ensuring continuous progress toward water quality goals.

To date, however, only a handful of communities have come forward to express an interest in working with the Agency on this initiative and our understanding is that, for the most part, these communities are ones that are engaged in consent decree negotiations or are operating under an EPA enforcement action. The true test for this new framework will be whether communities that are not facing an enforcement action but have large water quality challenges nonetheless can use the Integrated Planning approach – as it has come to be known – to meet these challenges more affordably. But, these communities may need some help to develop plans in order to take advantage of this model and these plans will cost money, some upwards of hundreds of thousands of dollars.

So last year, we suggested that a small amount of money be set aside in EPA's budget to support 10 to 20 pilot communities to demonstrate and evaluate the effectiveness of this model. This appropriations request had broad bi-partisan support in both the House and Senate but in final conference negotiations we weren't able to get it across the finish line in part because we couldn't convince the Agency that supporting pilot communities with planning grants would help further their own initiative.

**Simpson Q9:** We'd like to try again this year and what I'd like to know is, will we have the support of the agency to undertake this pilot effort in order to demonstrate and evaluate the effectiveness of the Integrated Planning model to help communities meet their water quality goals?

## **Climate Change**

**Simpson Q10:** Administrator McCarthy, can you please elaborate on the EPA's climate priorities, as reflected in the FY2015 budget proposal? It appears to me that while funding for the agency overall is down, climate initiatives appear to be getting an increase.

## **Fish Consumption**

EPA, during the recent webinar of the fish consumption survey for Idaho tribes, stated that they intend to derive historical/heritage fish consumption rates. EPA rules require that state and tribal water quality criteria to be based on "sound scientific rationale" (see 40 CFR § 131.11(a)(1)).

**Simpson Q11:** How will EPA meet this requirement for sound scientific rationale in the determination of historical/heritage fish consumption rates? Also, what is the basis for using an "aspirational" or "heritage" fish consumption rate for the establishment of water quality criteria without such "rates" being speculative?

Executive Order 13563, which discusses improving regulation and regulatory review, emphasizes regulations being "based on the best available science," that public participation occur through an "open exchange of information and perspectives", and that agencies provide "timely online access... including relevant scientific and technical findings."

**Simpson Q12:** How will EPA comply with this Executive Order in relation to the fish consumption survey? For example, will EPA make all underlying data (excluding the identity of personal tribal members) available for the public to review and analyze?

**Simpson Q13:** The EPA tribal survey relies upon recommendations set forth in a 2002 report by the National Environmental Justice Advisory Council (NEJAC). Since the recommendations in the NEJAC Report are not binding requirements under the Clean Water Act, how does EPA propose to rely upon the recommendations in the NEJAC Report in advising Idaho how to develop appropriate human health criteria?

EPA is planning to have a peer review panel to review the tribal surveys. Such a peer review process is consistent with the Presidential Memorandum on scientific integrity (March 9, 2009).

**Simpson Q14:** How will EPA select the members of the peer review panel? Will EPA give consideration to nominations from the public for such a panel?

Questions from Mr. Joyce

**Bedbugs and EPA's denial of the use of insecticide propoxur in Ohio**

In the fall of 2009, the Ohio Department of Agriculture, in recognizing the seriousness of the state's bed bug problem, requested that the U.S. EPA grant the state a public health exemption to allow authorized state certified pesticide applicators the use of insecticide propoxur to treat for bed bugs in certain settings. In June of 2010, your predecessor at the EPA wrote then-Governor Ted Strickland declining Ohio's request. Unfortunately, Ohio has not heard anything since late 2010 from the EPA in our request to use propoxur to get rid of bed bugs.

**Joyce Q1:** Is there any information you can provide on why the response has been delayed?

**Joyce Q2:** And if insecticide propoxur will not be approved by the US EPA, can you provide any chemicals that would help reduce the bed bug problem?

## Questions from Mr. Valadao

### **Renewable Fuel Standard**

It is my understanding EPA has not yet finalized blending targets for the Renewable Fuel Standard for 2014. EPA's November proposal took a common sense approach by setting the mandate to hold biofuel production constant because consumers and their vehicles just can't handle any more ethanol.

Yet, at a January conference of state Departments of Agriculture, press reports quoted you as saying, " 'I have heard loud and clear that you don't think we hit that right,' and that given all the feedback, the final rule when released will be 'in a shape that you will see that we have listened to your comments.' "

To me, these comments suggest that EPA may reconsider its previous RFS proposal to appease agriculture interests to the detriment of consumers.

**Valadao Q1:** Should your comments be taken to mean consumers will have to continue using more and more ethanol, regardless of what their vehicles were designed to handle?

**Valadao Q2:** According to your assessment of the law, does EPA have the authority to finalize a rule outside of the existing November proposal?

It is my understanding the volume of cellulosic biofuel (up to 9 million gallons of cellulosic biofuel) mandated by the RFS proposed rule relies heavily on a company named KiOR. However, I'm told that analysts are now expecting KiOR to file for bankruptcy next week. EPA's proposal projects that any company currently in biofuels production will only continue to increase its production. As a result, the oil industry could have to buy EPA RFS credits if EPA sets its RFS standard too high and the fuel isn't produced. In any business, continually increasing production is far from a certainty.

**Valadao Q3:** Will EPA include and consider an assessment of the financial stability of the companies it relies upon to produce biofuels when setting cellulosic production mandates?

**Valadao Q4:** EPA is habitually late in issuing RFS rules. What plan do you have to get the rulemaking process back on track, and will the 2015 Final Rule be issued on November 30th, as required by law? Will it be released when the 2014 RFS volumes are released?

**Valadao Q5:** Are you aware of the numerous studies, some of which are from government agency sources, which have found that the RFS increases demand for corn, which in turn raises the price of numerous food commodities and that these increased costs to businesses in the food industry supply chain are ultimately passed on to consumers in the form of higher food prices? For example, the CBO, the USDA's Economic Research Service, the National Research Council and the Congressional Research Service have all issued studies to this effect. Are you aware of these?

**Valadao Q6:** Are you aware of the devastating impact the RFS has had on the livestock, dairy and poultry industries in recent years? The RFS has raised the price of animal feed for animal farmers. Some have gone out of business as a result. The National Research Council found, in a 2011 study of the RFS that the impact of biofuels on the retail price increase of broiler meat during 2007-2009 was in the range of 5.8 to 11.6%.

**Valadao Q7:** In that same study the NRC estimated that a 20-40% increase in the price of corn, which is actually at the low end of what we've seen since enactment of the RFS, results in a 2-4% increase in prices of corn-based food products at the retail level. Retail prices are what consumers pay, so there's a direct impact on consumers from this policy.

**Valadao Q8:** According to our own CRS, the RFS will raise annual food costs by \$3 billion by 2022. Did you know that food price inflation since full implementation of the RFSII in 2008 has gone from slightly lower than general inflation to 60% higher than general inflation?

**Valadao Q9:** What can EPA do to relieve some of these costs for consumers?

### **Hydraulic Fracturing**

**Valadao Q10:** You have said that hydraulic fracturing can be done safely and have agreed with former EPA Administrator Lisa Jackson that there have been no confirmed cases of hydraulic fracturing impacting drinking water. Given that the President's Climate Action Plan relies heavily on the use of natural gas, what is your vision for educating the American public that hydraulic fracturing is safe, creates jobs, and has lowered American energy prices?

I am very concerned that the hydraulic fracturing study that EPA has been working on now for over four years has gone beyond Congressional intent and has expanded in scope. As I understand it, the request to EPA in the FY 2010 appropriations report was to study any link between hydraulic fracturing and drinking water. I understand the agency is now undertaking several new research areas and may have 30 or more separate reports as part of this study. Four years later, I am hearing concerns about how EPA is conducting the study and that the agency seems to be studying every water issue related to oil and gas development rather than focusing on fracking.

**Valadao Q11:** Many are becoming concerned that the EPA fracking study is moving beyond the scope given it by Congress. Would you care to respond to that and what is the EPA's current timeline for completing its study? What are current total costs to EPA date related to the study? What do you expect to be the total costs of the study when finalized?

**Valadao Q12:** As I understand it, EPA plans to release the fracking study to the public at the same time it is submitted to the Science Advisory Board for peer review. Is it normal for EPA to release its scientific studies before peer review is completed? Are you concerned that by releasing the study before peer review is completed the EPA is setting itself up for a situation in

which it may have to back track on findings that do not stand up to peer review. Couldn't that result in the public being unnecessarily scared or misled?

### **Waters of the United States**

**Valadao Q13:** Your agency is developing a rulemaking to redefine "water of the U.S.". A coalition of industry groups has critiqued a leaked version of your economic analysis for this rule. Is it true that in looking at costs your agency did not update 20 year old studies for inflation? Did EPA analyze each program under the Clean Water Act and whether that program would be expanded with this change and by how much?

**Valadao Q14:** How long does it take and how much does it currently cost on average to get a nationwide permit under the Clean Water Act? Is it safe to say that increasing the number of waters under federal regulation, especially if you're including ditches, dry streams, and isolated ponds and puddles, will increase the average time it takes to get a permit and will increase the average cost to get a permit?

**Valadao Q15:** We are under a drought in CA. Can you tell me: If I have a dry stream right now, but by some miracle we get rain and the stream bed has some flow for a short time that dries up before it gets to a larger body of water, with 100 percent certainty can you tell me whether that stream bed is or is not a "water of the U.S."? That scenario is typical of those that exist on many agricultural lands. If you cannot answer my question with 100% certainty, then how can you tell farmers and ranchers that they have nothing to worry about with respect to the Waters of the U.S. Rule?

**Valadao Q16:** If I am a land owner and EPA has told me through a jurisdictional determination that my dry stream bed is not a "water of the U.S." can a third party still sue me under the Clean Water Act if they disagree with the EPA's determination?

### **Herbicide-Tolerant Crops**

Weed resistance is not a problem unique to biotech crops. Ensuring farmers have access to multiple modes of action to address weed resistance is very important. One way to help farmers is to ensure they have access to new herbicide-tolerant crops. I understand USDA has not yet deregulated products that will give farmers some additional ammunition against stubborn weeds and that EPA continues to wait for USDA's deregulation decisions before taking action on herbicide approvals.

**Valadao Q17:** Can you help me understand why it is taking so long for these crops to get into the marketplace? Is your agency required to wait on USDA's deregulation before the EPA takes action? Are USDA and EPA efficiently coordinating the deregulation of herbicide-tolerant crops? If so, what coordination has occurred that can be quantified as an improvement in coordination between the agencies?



## Questions from Mr. Stewart

### **SAB and Water Connectivity**

As you know, the Environmental Research, Development and Demonstration Act of 1978, or ERDDAA, states that the EPA “shall establish a Science Advisory Board which shall provide such scientific advice as may be requested by...the Committee on Science, Space and Technology.”

You are responsible for appointing members of the EPA’s Science Advisory Board. This panel exists to “provide such scientific advice as may be requested” by Congressional Committees of jurisdiction. Despite this statutory requirement, your Office of Congressional and Intergovernmental Relations has prevented the Science Advisory Board from responding directly to requests for scientific advice by the Science Committee, including on critical ongoing reviews related to the Clean Water Act and hydraulic fracturing.

**Stewart Q1:** I’ve checked the report accompanying ERDDAA. It indicates that the goal was to “allow Congress to request scientific advice from the EPA Science Advisory Board without the SAB being obligated to seek permission from the Administrator before providing such advice to the Congress.” (HR Rep No. 96-959 at 58 (1980). In your view, does the SAB need to ask your permission to respond to requests for scientific advice to Committees of jurisdiction?

**Stewart Q2:** On December 16, 2013 – At the end of the public comment period of the meeting, a letter was transmitted from EPA Associate Administrator to Chairmen Smith and me regarding “charge questions” for the water connectivity report we sent to the Board. The letter from the SAB stated that “we believe many of the questions you raise are addressed in the existing charge questions.” Is it your view that the SAB is properly responding to questions from the Committee on Science, Space and Technology?

**Stewart Q3:** On a related issue, does the SAB have to ask your permission to testify in front of a Congressional Committee?

**Stewart Q4:** The committees of jurisdiction have requested that, consistent with the historical practice, the SAB provide testimony on EPA’s budget request as well as the Board’s own budget. The SAB’s request includes several millions of dollars and a \$1.1 million increase. Yet the SAB denied this request stating that they do not have permission from the EPA. Why should we provide appropriations for this body if it is not following its statutory obligations and fails to respond to communications from Congress related to scientific inquiries and matters related to its budget?

**Stewart Q5:** You just released your regulation defining federal jurisdiction under the Clean Water Act, despite the fact that the Science Advisory Board has not completed their review of the underlying scientific report. Will you ask the panel to review the proposed rule? And will you allow the Board to follow the law and respond to specific questions submitted by Congress on the proposed rule?

### **NSPS (New Source Pollution Standards)**

**Stewart Q6:** You are currently reviewing New Source Pollution Standards. Have you consulted with Fish and Wildlife on any non-air impacts resulting from the proposed rule?

**Questions Submitted for the Record by Representative Calvert****Waters of the United States/ "Navigable Waters"**

The rule recently proposed by EPA on Waters of the United States would expand the ability of the Federal government to regulate nearly every water body in the United States. Where previously there were questions about the role of States vs. the Federal government in ensuring clean waterways, EPA's rule proposes to eliminate many of those questions. The certainty EPA claims the rule offers is the certainty that EPA will assert its control over State's rights and require more Federal permits. It is often one thing to share two different perspectives on a policy. However, EPA's claim that *"the proposed rule will not add to or expand the scope of waters historically protected under the Clean Water Act"* is entirely misleading. The only way that EPA can justify this claim is by assuming that Supreme Court decisions in 2001 and 2006 never happened. Prior to those court decisions, EPA believed it had the jurisdiction to regulate nearly every water body under the Clean Water Act. When the Supreme Court disagreed, EPA was forced to re-evaluate the State role with respect to water rights. That is why it is unfortunate that this proposal proves to be the greatest bureaucratic expansion of Federal control over land and water resources in the 42-year history of the Clean Water Act. The amount of acreage subject to EPA's jurisdiction will expand exponentially as more waterways are subject to permitting, and the amount of uncertainty and the lack of prepared cost estimates associated with this rule are alarming.

While the Agency has stated that the rule would not be issued until the Connectivity study has been finalized, however the Connectivity study has yet to be peer-reviewed by the Science Advisory Board.

**Calvert Q1:** Is it important for the Agency's regulatory promulgation to be based on science? If so, what is the justification for moving forward with the expansion of the scope of Waters of the U.S. before the Connectivity Study is completed and undergone peer review?

**Answer:** We agree that it is essential for the Agency's regulatory promulgation to reflect the most current relevant science. In the case of the proposed rulemaking for the definition of "waters of the U.S." under the Clean Water Act (CWA), the EPA's Draft Connectivity Report ("Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence") provides a review and synthesis of the published, peer-reviewed scientific literature regarding the effects that streams, wetlands, and open waters have on larger downstream waters such as rivers, lakes, estuaries, and oceans. The draft report has already undergone both internal and external peer review, and is now being reviewed by the EPA's independent Science Advisory Board (SAB). The SAB published its draft peer review on April 1 and held public meetings to discuss the draft review on April 28 and May 2. The SAB expects to issue a final peer review report later in 2014. The EPA has committed that the rule will not be finalized until the SAB review and the final Connectivity Report are complete.

**Calvert Q2:** There is no doubt that a definition of the Kennedy test of significant nexus is extremely difficult to define. Has the Agency considered contracting with an outside body, such as the National Academy of Sciences, to assist EPA in scientifically defining how the federal government should define “connectivity” or a “significant nexus” between waters? If so, what was the result of those discussions?

**Answer:** As noted in response to your previous question, the agency believes it is critical for its rulemaking efforts to reflect the best science. To help do this, the agency developed a draft report that synthesizes available peer-reviewed literature, which is receiving extensive independent peer review by the agency’s Science Advisory Board (SAB). The agency believes that the SAB review process will provide sufficient independent external review of the agency’s scientific work, and thus the agency has not specifically considered any additional process for obtaining such review with an outside body such as the National Academy of Sciences.

While the stated intent of the proposed rule is to minimize uncertainty of interpretation of federal authority under the Section 404 wetlands permitting program, it seems that it will increase uncertainty for other Clean Water Act programs.

**Calvert Q3:** What is the process by which EPA and the Corps will follow to initiate a significant nexus test? Can anyone request a jurisdictional determination? Will the owner/operator need to ask for a jurisdictional determination? Will a permit need to be requested?

**Answer:** Most questions regarding Clean Water Act (CWA) jurisdiction arise in the context of the Section 404 program, and the Corps of Engineers (Corps) has primary responsibility for determining jurisdiction in this context. Under the policy contained in the proposed rule, only waters that fall in the “other waters” category would be subject to an individual significant nexus evaluation. When a CWA Section 404 permit applicant, i.e., a landowner or other party that has realty interest in the property, requests from the Corps a jurisdictional determination for a waterbody that falls within the “other waters” category in the proposed rule, the Corps would perform a significant nexus evaluation to determine its jurisdiction. Only an applicant, as previously defined, can request a jurisdictional determination. If the applicant proposes to discharge dredged or fill material into waters of the U.S., it is the applicant’s responsibility to request and obtain a permit under Section 404 of the Clean Water Act, providing the activity is not exempt under another section of the Act. If the applicant is uncertain whether the water is a waters of the U.S., the applicant could ask the Corps to conduct a jurisdictional determination before submitting a permit application, or could simply apply for the permit without asking for the determination.

**Calvert Q4:** What is the estimate of the additional resources, both in funding and in staffing, that will be needed to administer and enforce this rule?

**Answer:** The U.S. Army Corps of Engineers, which is the agency that processes and issues these permit applications, estimates the administrative cost of these additional permits to range from \$7.4 to \$11.2 million, annually. This information is documented in "Economic Analysis of Proposed Revised Definition of Waters of the United States," September 2013, which is in the docket for the proposed Waters of the U.S. rule. The EPA develops and interprets the environmental criteria used in evaluating permit applications, which can vary in cost depending upon the complexity of a permit, so quantifying EPA costs would be much more challenging.

The agencies believe the proposed rule will reduce some existing permitting costs and expedite the permit review process by clarifying determinations of Clean Water Act jurisdiction, which has been time-consuming and resource intensive for field staff and the regulated community since the Supreme Court decisions in SWANCC (2001) and Rapanos (2006). The two Supreme Court cases and subsequent guidance have often required agency staff to spend resources to understand and apply complex jurisdictional standards. The uncertainty surrounding jurisdictional questions has increased the paperwork, costs, and time associated with jurisdictional determinations.

**Calvert Q5:** What is the Agency's, or the Corps', estimate for how many additional permits will be issued under the rule?

**Answer:** The EPA estimates that approximately 75 additional Clean Water Act Section 404 individual permits and 1,300 additional applications for coverage under general permits would be required annually on a nationwide basis if the agencies' proposed rule were finalized in its current form. This information is documented in "Economic Analysis of Proposed Revised Definition of Waters of the United States," September 2013, which is in the docket for the proposed Waters of the U.S. rule. The agency invites comments on this document as part of the public comment period on the proposed rule.

**Calvert Q6:** The proposed rule defines all waters within a floodplain or a riparian area as waters of the U.S.; however, the rule does not clearly define what the boundaries would be of a floodplain or a riparian area. Recognizing that the Federal Emergency Management Agency (FEMA) spends over \$100 million each year mapping floodplains, and that no federal agency maps riparian areas, what resources does EPA have to map these areas? What will the costs be to EPA if you chose to designate floodplains differently than FEMA's 100-year floodplain?

**Answer:** To implement this part of the proposed rule, assuming it remains in the final rule, the Corps and the EPA would use existing tools, including aerial photographs, topographic maps, USGS data, LIDAR if available, and best professional judgment to determine the appropriate floodplain or riparian area to be used in the adjacency determination. In some cases, this would require the Corps and the EPA to conduct an investigation on the property and assess field

indicators to make the determination. There is no need for the Corps or the EPA to map new floodplains or riparian areas, since a determination would only be required when a particular project might lead to a discharge within a floodplain or riparian area, and we would not request resources to do so. In the proposed rule, the agencies requested comment on a variety of issues related to the use of floodplains or riparian areas in defining adjacency, and will carefully consider public comment on these issues before finalizing the rule.

**Calvert Q7:** The proposed rule defines all tributaries as waters of the U.S. Federal and state governments operate water delivery systems such as the Central Arizona Project, the Central Utah Project, the California Aqueduct, and the Colorado River Aqueduct that clearly fit the rule's proposed definition as a tributary since they have a bed, a bank, an ordinary high water mark, and they conduct flow to other waters of the U.S. What will be the impact of this proposed rule on these water delivery systems? What will be the cost implications to your and other federal agencies that must regulate these systems as waters of the U.S.?

**Answer:** The proposed rule does not expand the existing jurisdictional reach of the Clean Water Act with respect to water delivery systems. Currently, not all water delivery systems are considered covered by the Clean Water Act, and the proposed rule will not change the status of water delivery systems.

### **Diesel Emissions Reductions (DERA) Grants**

The DERA program is a successful, bi-partisan program that initially started with the replacement of school bus engines under the Clean School Bus program. It expanded to include the retrofitting of many other diesel engines, including construction equipment.

In 2012 the Administration proposed to eliminate the diesel emissions grants, or DERA grants. This proposal was met with significant opposition as the program provides \$13 of economic benefit per Federal dollar, the retrofit technology supported by DERA reduces black carbon emissions by 90 percent and projections estimate that nearly 2,000 lives will be saved by 2017 as a result of this funding. The program has achieved real pollution reductions without the need for heavy-handed, top-down regulations along with the ability to leverage private investment three-to-one. Ultimately DERA funding was restored to \$30 million in the 2012 bill. Last year, the Administration proposed to cut the grants to \$6 million and the Omnibus restored the funding to \$20 million. Here again in fiscal year 2015 the Administration proposes to eliminate the program.

**Calvert Q8:** Given the large demand for these grants and the lower fleet turnover, why has the Administration proposed to eliminate the program in FY 2015?

**Answer:** The EPA must make difficult choices to prioritize its activities. While the DERA grants accelerate the pace at which dirty engines are retired or retrofitted, pollution emissions from the legacy fleet will be reduced over time without additional DERA funding as portions of the fleet

turnover and are replaced with new engines that meet modern emission standards. However, even with attrition through fleet turnover, approximately 1.5 million old diesel engines would still remain in use in 2030. Ongoing projects will continue to clean the air and support jobs during FY 2015, as the Agency continues to support and administer projects that have already received funding.

At least \$2 million annually has been used for a demonstration of the rebate authority for school bus replacements. This was highly successful and EPA had roughly 1,000 applications submitted in fiscal year 2012.

**Calvert Q9:** In what way is the rebate model a more efficient or preferred approach to the old system of direct grants to states?

**Answer:** The Diesel Emissions Reduction program has provided immediate emission reductions from existing diesel engines to communities across the nation through engine retrofits, rebuilds and replacements; switching to cleaner fuels; idling reduction strategies; and other clean diesel strategies. To date, the program has awarded grants to over 600 communities and States to reduce nitrogen oxides (NOx) and particulate matter (PM), which contribute to serious public health problems.

In FY 2013, the Agency piloted a new approach that utilizes a rebate program to target specific fleets. Of the FY 2012 funding, \$2 million was used for a demonstration of the rebate authority for school bus replacements, and EPA received over 1,000 applicants requesting over \$70 million in funds to replace more than 2,800 older diesel buses. Of those, 28 communities were selected and 76 older buses were replaced with new post-model-year 2010 clean buses. Benefits of the rebate approach were simplicity and efficiency for the applying fleets and a time savings of an average of 18 months over typical grants. In addition, through the rebate mechanism, the Agency is able to precisely target funding toward the dirtiest, most polluting engines in specific locations. Certain bands of engine model years and pollution control strategies yielding the most cost-effective emissions reductions can be specified.

Grants, on the other hand, promote capacity-building at the local level while also trying to hone in on the most cost-beneficial projects. The direct grants to States are best utilized to retrofit a whole fleet of diesel-powered vehicles. The Agency believes that both grants and rebates have played an important role in eliminating emissions from engines in the diesel legacy fleet.

### **Stormwater**

The 2013 proposed updated MSGP permit seems to indicate that the Agency is moving away from using the traditional best management practice methodology and encouraging the use of numeric effluent limits. Many permitted businesses have expressed serious concerns with this national movement. Also, Individual state permitting authorities have indicated that EPA headquarters has encouraged them to adopt numeric effluent limits instead of relying on BMPs to control stormwater pollutants.

**Calvert Q10:** Can you please comment on the proposed permit? What is EPA's plan for continued measurement of stormwater pollutants under the National Pollutant Discharge Elimination System (NPDES)?

**Answer:** EPA proposed the reissuance of the Multi-Sector General Permit (MSGP) on September 27, 2013, and is currently considering the comments it received. The proposed permit contains essentially the same effluent limits as the previous versions. These effluent limits require the implementation of technology-based controls (i.e., best management practices or BMPs). When EPA issues an effluent limitation guideline (ELG) or a New Source Performance Standard (NSPS) that applies to stormwater discharges, such requirements must be incorporated into the permit. Newly applicable to this MSGP is the Airport Deicing ELG, which contains a numeric effluent limitation for urea, an infrequently used runway deicer. As explained in the final ELG, EPA expects that in most cases operators would choose to substitute a non-urea based deicer, as such substitutes are readily available at reasonable cost, and thus avoid the need to comply with the numeric limit. No other new numeric limits have been proposed. The proposed MSGP included the same monitoring requirements as in previous versions (save for adding a saline receiving water correction), but EPA did solicit comments on modifying these requirements. One of the carryover monitoring requirements affects facilities that discharge to impaired waters. These facilities must take a yearly sample for the pollutant(s) that cause the impairment. The MSGP's other main monitoring requirement, affecting about half of all EPA's industrial permittees, involves "benchmark" monitoring. If the four-sample average level of a specific pollutant exceeds a benchmark level, the facility must evaluate its BMPs to determine if adjustments can be made to lower the level of the pollutant. Exceedance of a benchmark level is not a permit violation. The MSGP also includes provisions that allow permittees to discontinue monitoring.

**Calvert Q11:** EPA has recently proposed to require NPDES regulated industries to submit stormwater permits electronically to permitting authorities. What safeguards is EPA considering to ensure that this data, which will be available to the public, is not used to fuel frivolous legal action?

**Answer:** The proposed NPDES Electronic Reporting rule is an important milestone for the NPDES program and will save time and resources for permittees, states, tribes, and EPA while improving compliance and providing better protection of the Nation's waters. The proposed rule will require facilities seeking permit coverage under a general permit to electronically file a Notice of Intent (NOI), which will enable states to more efficiently process these forms. Facilities seeking an individual NPDES permit will not need to electronically submit their application. It is important to note that the efficiencies created by the proposed rule do not change the public nature of the data on these NOIs or individual permit applications. In particular, the proposed rule does not add any new reporting requirements or change the public nature of the data. Data on NPDES permit applications are publicly available pursuant to CWA section 402(j), 33 USC 1342(j), which requires that "[a] copy of each [NPDES] permit application and each [NPDES] permit ...be available to the public. Such permit application or permit, or portion thereof, shall further be available on request for the purpose of reproduction." In addition, CWA section 402, 33 USC



1342(a)(1), (b)(3), requires that any permits only be issued following a public hearing, and that states implementing NPDES programs provide for "public ... notice of each application for a permit and [] provide an opportunity for public hearing before a ruling on each such application." Consequently, there are no restrictions to these NPDES permit application data, and electronic reporting itself has no bearing on the availability of the data to the public. In addition, the EPA requested comment in the proposed rule on the issue of how best to satisfy these disclosure requirements in the context of electronic reporting and will carefully consider public comment before finalizing the rule.

**Calvert Q12:** In the proposed electronic reporting rule the Agency offered the possibility of a second rulemaking to address these very concerns. What is the status?

**Answer:** In the proposed NPDES Electronic Reporting Rule, the Agency gave notice that it might open up a second comment period. This supplemental notice would be an opportunity for the EPA to identify issues, clarify elements of the proposed rule, and discuss options for how the EPA might modify the rule to address issues raised by stakeholders in response to the Notice of Proposed Rulemaking. The Agency anticipates the release of this supplemental notice later this summer.

**Calvert Q13:** When Agencies enter into voluntary settlement agreements with private parties to issue specific rulemaking requirements, the practice severely undercuts public participation in the process. What voice does the public have prior to EPA agreeing to the terms of a settlement agreement, and does the Agency believe that this is sufficient? How does the Agency ensure public participation under the terms of a settlement agreement?

**Answer:** Each settlement agreement is the result of a negotiation between opposing parties, with the Department of Justice (DOJ) representing the Environmental Protection Agency (EPA) and the interests of the United States. In many cases, the agreements also go out for public comment, and are entered by a court only upon a finding that the terms are fair, reasonable, and in the public interest, and that the overall resolution is consistent with the underlying statute and allegations.

The EPA does not and will not commit in a settlement agreement to any final, substantive outcome in a rulemaking or other decision making process. Rather, in EPA rulemaking, there is an extensive and robust public process, designed specifically to provide for input and participation. The Administrative Procedure Act (APA) requires the Agency to provide public notice and an opportunity for comment on all proposed rules. This opportunity to comment is open to any interested party and comments submitted are carefully considered and often significantly shape the final rule. It is after the conclusion of that public process that Agency would publish a final rule.

## **Bristol Bay/Pebble Mine Watershed Study**

For the past few years the Committee had been asking for information -- for a table -- that shows how much the Agency has spent on the Pebble Mine/Bristol Bay watershed study. This study was not directed by Congress and the Agency had not requested funding from Congress to conduct the study. Last year EPA provided a table in response to questions for the record, indicating that \$2.4 million had been spent between fiscal year 2011 and 2013 on the watershed assessment.

The Agency's response also indicated that budget requests from fiscal year 2011 to 2014 did not explicitly identify resource levels for the Bristol Bay work. The Agency response also indicated that since the project was funded within existing authority and appropriated funding, that EPA did not need to identify an offset or request a reprogramming from Congress in order to undertake the work.

**Calvert Q14:** The budget justification highlights the amount of funding for several other studies and funding for hundreds of other activities. Why has this study not been identified in prior budget justifications? Why has this study been treated differently from those other programs?

**Answer:** Funding for watershed studies, such as the Bristol Bay Watershed Assessment, is included in the *Wetlands, Surface Water Protection, and Research: Safe and Sustainable Water Resources* program/projects (FY 2014 justifications beginning on p. 529, p. 553, and p. 157, respectively). The EPA has broad authority to conduct this type of work under CWA Section 104.

Assessments of watershed research, including Bristol Bay, are encompassed in general congressional justification language. For example, the following language is included in the Research: Safe and Sustainable Water Resources FY 2014 President's Budget justification language:

“Developing approaches to assess watershed integrity, resilience and restoration potential by establishing key watershed indicators;  
Using a systems-based approach to investigate methods for sustaining water quality in watersheds;  
Continuing to study the social, economic, human health and environmental impacts of water quality degradation;”

**Calvert Q15:** How much funding has been spent in fiscal year 2014 on the Bristol Bay assessment? Please provide an update to the table that the Agency provided for the record last year that includes any FY14 amounts?

**Answer:** The EPA coordinated with federal, state, and local partners to conduct a comprehensive scientific analysis of the Bristol Bay watershed to better understand how future large-scale mining may affect water quality and the Bristol Bay salmon fishery. The EPA issued a final assessment on January 15, 2014. Although the assessment was released in January 2014, assessment activities were completed in March 2014, including final formatting and the release of over 1,100 pages of responses to public comments of the draft reports.

**As of May 2014 (Non-payroll Dollars in Thousands):**

<b>Appropriation Account</b>	<b>Program Area</b>	<b>Program/Project</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>Total**</b>
EPM	Water Quality Protection	Surface Water Protection	\$123	\$247	\$247	\$26	\$644
EPM	Water: Ecosystems	Wetlands	\$734	\$331	\$110	\$ -	\$1,175
S&T	Research: Safe and Sustainable Water Resources*	Research: Safe and Sustainable Water Resources	\$8	\$363	\$504	\$88	\$962
S&T	Research: Chemical Safety and Sustainability	Human Health Risk Assessment	\$ -	\$ -	\$ -	\$11	\$11
<b>Total:**</b>			<b>\$865</b>	<b>\$941</b>	<b>\$861</b>	<b>\$125</b>	<b>\$ 2,792</b>

\* EPA's Research and Development program changed its budget structure in FY 2012. Resources associated with the old structure have been consolidated into the new structure.

\*\* Totals may not add due to rounding.

**Calvert Q16:** Has the Agency requested funding in the fiscal year 2015 budget for the Bristol Bay assessment? If so, please provide a reference to where the funding is requested in the FY15 congressional justification.

**Answer:** No, the Agency's FY 2015 request does not include funding for the Bristol Bay assessment because it was completed in January 2014.

### **Hydraulic Fracturing Study**

There is concern that the hydraulic fracturing study that EPA has been working on now for over four years has gone beyond Congressional intent and has expanded in scope. The request from this Subcommittee in FY 2010 was for EPA to determine whether there is a link between hydraulic fracturing and drinking water. Yet four years and \$25 million later, the Agency has developed several new research areas and may have more than thirty separate reports as part of this study. Rather than a study, this now seems to be an entire research program within the Office of Research and Development.

**Calvert Q17:** EPA's FY 2015 budget requests an additional \$6.1 million for the study to determine whether there is a relationship between drinking water and hydraulic fracturing. Why is the \$25 million that EPA has received to date an inadequate amount to complete the study?

**Answer:** The study scope was designed to meet Congress' request and was established in November 2011 in the *Plan to Study the Potential Impacts of Hydraulic Fracturing on Drinking Water Resources*, after public comment and peer review by the Science Advisory Board. The scope has not changed since the release of the final study plan.

The *Study of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources* is national in scope and very complex. The study uses a transparent, multidisciplinary research approach with significant stakeholder engagement and peer review. The FY 2015 President's Budget requests \$6.1 million to complete the assessment report as requested by Congress.

**Calvert Q18:** If the draft study is expected to be released in December 2014, then EPA's primary responsibility will be to respond to comments in FY15. Will it require \$6.1 million to respond to comments?

**Answer:** The *Study of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources* is national in scope and very complex. The careful and intensive review and synthesis of literature, research results, and stakeholder input, along with the recently intensified state outreach effort, will ensure that EPA's draft science assessment is as robust and complete as possible. We expect to release the draft assessment report for public comment and peer review by early 2015. The EPA then expects to provide a final report that is responsive to comments received from the public and the peer review.

**Calvert Q19:** In FY 2010, the subcommittee requested two other studies that were both completed within two years and for less than \$1 million each. Those also were complex studies on Black Carbon and on the economic impacts of the Category 3 Marine rule on the Great Lakes. Why has this hydraulic fracturing study been so much more expensive for the American taxpayer and taken twice as long?

**Answer:** The EPA believes a transparent, research-driven approach, with significant stakeholder involvement can strengthen our clean energy future and public confidence in responsible energy development. The *Study of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources* is national in scope and very complex. It uses a multidisciplinary research approach to assess the potential for hydraulic fracturing for oil and gas to impact the quality or quantity of drinking water resources. The results of the study will be presented in the draft assessment report, which will synthesize results from the EPA's original research with a broad literature review and information submitted by stakeholders through extensive stakeholder outreach. The Economic Impacts of the Category 3 Marine Rule on Great Lakes Shipping report was classified as an Influential Scientific Information (ISI). It was developed by the Office of Air and Radiation's (OAR's) Office of Transportation and Air Quality.

The Black Carbon report also was classified as an ISI. It was prepared by OAR's Office of Air Quality Protection and Standards. An important distinction is that these two reports were not research. The Report to Congress on Black Carbon specifically states that they used existing scientific information.

Unlike the other two referenced studies, the draft assessment report is a Highly Influential Scientific Assessment (HISA) and the EPA is adhering to a rigorous, transparent peer review of the conclusions of the study. As a HISA, the draft assessment report and its underlying data will receive meaningful and timely peer review in accordance with the EPA's peer review handbook.

There is also concern that the study will be released before there is a peer review by the Science Advisory Board. It is my understanding that EPA plans to release the study to the public at the same time it is submitted for peer review.

**Calvert Q20:** What is the current timeframe for the SAB peer review and for the release of the study?

**Answer:** The EPA expects to provide the draft assessment report of the *Study of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources* for public comment and peer review by early 2015. The EPA then expects to provide a final report that is responsive to comments received from the public and the peer review.

The EPA customarily makes a draft report available for comment at the same time it is submitted for peer review by the Science Advisory Board (SAB). With reference to Highly Influential Scientific Assessments, Section III(5) of OMB's *Final Information Quality Bulletin for Peer Review* states that: "Whenever feasible and appropriate, the agency shall make the draft scientific assessment available to the public for comment at the same time it is submitted for peer review (or during the peer review process)."

### **Rural Water Technical Assistance Grants**

The 2012 Omnibus included \$15 million to establish a competitive grant program wherein entities that provide technical assistance to small or rural water utilities, or to private well owners, have an opportunity to compete for funds to assist these communities with understanding and complying with EPA water regulations. EPA has not included funding in the President's budget for these grants, and it seems that the Administration is prioritizing accelerated regulation over working with communities to understand their needs and challenges. It also seems like the Administration is cutting successful, bi-partisan programs knowing that Congress will restore the funding. In doing so, this allows the Administration to propose other new programs that we just don't have the funding to pay for in a constrained budget environment.

**Calvert Q21:** Why is it not a top priority for the Administration to fund these technical assistance programs that help communities keep up with, and understand the impacts and requirements in the EPA's water regulations, particularly as the Agency continues to propose more regulations?

**Answer:** Assisting small and rural communities in compliance with water regulations is very much a priority for this Administration. EPA's FY 2015 budget does request \$757 million for the Drinking Water State Revolving Fund (DWSRF) program, which can be used to provide special assistance to systems serving 10,000 or fewer customers. For example, States are required to provide a minimum of 15 percent of the funds available for loan assistance to small systems to help address infrastructure needs.

In addition, the Agency strongly supports state use of Public Water System Supervision (PWSS) funds and the Drinking Water State Revolving Fund 2 percent small system technical assistance set-aside to provide assistance to small and rural water systems. The 2 percent DWSRF set-aside is used by nearly every state to support their small systems and several states use these funds for non-profit state affiliates.

EPA's small system approach works to focus state and Federal technical and infrastructure resources to assist small and rural water systems. The Agency continues to believe that states are best positioned to develop technical assistance plans for their water systems and the funds available via the DWSRF and PWSS grants allow them to do so.

### **e-Enterprise and e-Manifest**

In order to assist in the workforce transition, EPA has proposed a \$61 million e-Enterprise initiative, which offers a menu of technological options for increasing efficiency with States and the regulated community. The Subcommittee will want to hear from both the States and business community in order to better understand how this initiative may help them reduce their reporting burden and meet various legal requirements. It is also critical that Congress understands the three- or five- year plan for these investments.

**Calvert Q22:** In a constrained environment, what may be the top two or three e-Enterprise projects that would produce the greatest immediate return on investment? In what ways would States, EPA or the regulated community realize those benefits?

**Answer:** E-Enterprise is a new business model that will modernize our nation's environmental programs. While the basic intent is to allow electronic transactions, streamlined implementation and reduced costs for all, the more important foundational principle is following a new joint decision making process with states to reduce duplication through coordinated investments and economies of scale. A further benefit is increased transparency as the public will have access to real time data about their environment and industries will be able to save money as they may be able to monitor their operations at a lower cost and find ways to capture lost product or feedstock chemicals that were escaping as pollution. It will modernize a full range of interactions between industry, EPA and states.

It is vital that EPA make an initial time investment in conducting a cross-state, cross-program and interagency analysis to identify the best practices and technologies that states already have in place and to understand the specific challenges of individual states and regulated communities. E-Enterprise should not be a menu of independent technological investment options, but rather a coordinated effort to manage a portfolio of what are inherently interrelated investments.

The initiative aligns the Agency with federal-wide policy initiatives for regulatory and technological reform. Source regulations are being evaluated at both the federal and state levels with the explicit intent to reduce burdens on the regulated community and the agencies. Existing processes and systems are being evaluated for best practices, and the best will be promoted or further developed as shared services with the intent to optimize resources for all involved. Program offices will be required to use shared services when possible, and investments will be prioritized for those systems that have the highest potential to reduce burden and effect cost savings.

Through joint governance and joint program analysis, the EPA, states and tribes are well along in this process of looking across the federal and state enterprise of environmental protection and systematically identifying opportunities for efficiency gains and burden reduction. The following are examples of work already underway where E-Enterprise will have an immediate, quantifiable impact:

1. Data collection under the National Pollution Discharge Elimination System (NPDES) contributes over 21 million hours of burden. The program is one of the foundational projects that is aligning with E-Enterprise, and the improvements and expansions to their system will help to reduce that overall burden by 914,000 hours annually. Conversion of NPDES discharge data to e-reporting will save states about \$29 million annually.
2. Consolidation and simplification of fuels reporting by industry under the Office of Air and Radiation. Through improved fuel electronic reporting, industries will save 170,000 hours annually. EPA will transform 66 reports to a single web-form report.
3. Implementation of electronic manifest program (E-Manifest) for industries transporting hazardous wastes that are regulated under RCRA. EPA estimates that the e-Manifest system will reduce the reporting costs to manifest users by more than \$75 million per year over the current paper-based manifest system.

While these projects are getting underway and organizational processes are being formalized, the EPA, states, and tribes have been identifying the next set of opportunities for immediate progress. In FY 2014 the states and EPA started an evaluation of a set of joint programs and projects that would yield the highest return on investment and contribute to the strategic goals of E-Enterprise. Over 80 projects were brought forward by the states and agencies for consideration. Selection of the highest priority projects is imminent and implementation can commence in FY 2015.

**Calvert Q23:** The e-Manifest system will significantly reduce paper recordkeeping costs in the regulated community for hazardous wastes by relying on an electronic tracking system similar to what UPS and FedEx have been using for years. It is a program that should have been built long ago. However, there have always been concerns about the cost and how to pay for it. The budget proposes \$10.4 million to build the system, which is greater than the original EPA estimates for the entire cost of the program (original estimate: \$6-8 million). Please explain why the program is already over budget in year two?

**Answer:** EPA is not over budget for its e-Manifest development efforts. EPA's internal estimates in the 2013 Alternatives Analysis yielded system development costs of approximately

\$16 million over three years. EPA provided that estimated cost during a June 2012 hearing before the House Committee on Energy and Commerce. In addition, in August 2012, the Congressional Budget Office estimated that over a five year period EPA would spend approximately \$15 million to create the electronic e-Manifest system.

These system development costs entail developing and building the full national core transactional IT system that industry would interact with and that would maintain the mobile workflow as shipments move from one place to another. This is a complex national IT system, for approximately 160,000 hazardous waste handlers, including between 4.6 and 5.6 million manifests each year. The benefits realized from the development of an e-Manifest system are significant. EPA estimates that that an e-Manifest system will reduce the reporting costs to users by more than \$75 million per year compared with costs of the current paper manifest system.

In FY 2014, Congress appropriated \$3.67 million for e-Manifest and the agency is making significant progress on regulatory development and pre-system planning including developing detailed e-Manifest System technical architecture plans. The \$10.4 million requested in FY 2015 President's Budget will allow the award of one or more contract(s) to initiate developing and building the national system. Maintaining the planned development schedule is essential to containing overall costs. In addition to IT system development costs (i.e. \$16M 2013 Alternatives Analysis referenced above), the FY 2015 request includes personnel and extramural costs associated with developing the regulatory and Advisory Board requirements of the e-Manifest Act, which must be funded from the dedicated e-Manifest appropriation as directed by the FY 2014 consolidated appropriation act.

**Calvert Q24:** In fiscal year 2013, the Subcommittee approved a reprogramming to initiate work on the e-Manifest project. EPA's Congressional Justification shows that no expenditures were logged in fiscal year 2013. Why was a reprogramming necessary in fiscal year 2013 if the Agency did not intend to spend those funds?

**Answer:** The Agency did incur spending for the project during FY 2013, however that spending could not be attributed to the new Hazardous Waste Electronic Manifest System Fund (e-Manifest) account as the appropriation for the account had yet to be established. Instead, e-Manifest spending occurred under the existing Environmental Programs and Management (EPM) account. The new e-Manifest project account was established in 2014 with the enactment of FY 2014 Consolidated Appropriation Act.

The EPA FY 2013 Congressional Justification requested \$2 million for the e-Manifest project under EPM. The FY 2013 Enacted Continuing Resolution did not provide any funding for this project. In order to move forward with the e-Manifest project, the Agency determined a Congressional Reprogramming of the EPM appropriation was necessary to enable spending for the project.



## **e-Enterprise and Enforcement**

EPA's budget documents indicate that the Agency is "pursuing justice" for Gulf residents and EPA actions have resulted in civil penalties to "punish misconduct". This offers a window of insight into EPA's view of its relationship with the public. The Agency also notes EPA collected \$2.6 billion in penalties, the highest amount ever despite fewer inspections and civil case initiations, which the Agency attributes to budget cuts. Nevertheless EPA's enforcement budget proposes 76 fewer FTE along with a \$22 million increase largely for E-Enterprise activities.

**Calvert Q25:** On one hand this proposal reflects EPA's use of technology to increase the efficiency of EPA personnel through the E-Enterprise initiative. However, others may view the e-Enterprise initiative as an initiative to increase enforcement actions. Have regulated entities expressed support for components of the E-Enterprise initiative, beyond the broad support for the E-Manifest system? If so, please provide any letters of support or other correspondence for the record.

**Answer:** The E-Enterprise initiative is not designed to increase enforcement actions. Rather E-Enterprise is a collaborative initiative between the states and EPA to modernize communication on environmental performance and enhance services to the regulated community, environmental agencies, and the public. E-Enterprise will increase transparency and efficiency, develop new environmental management approaches, and employ advanced information and monitoring technologies in a coordinated effort to manage and modernize environmental programs. While industry does support moving from paper-based reporting to electronic systems, we have not yet reached out to the regulated community specifically on E-Enterprise. The states and EPA recently completed the E-Enterprise Conceptual Blueprint, which sets forth next steps, including engagement with the business community. The E-Enterprise Conceptual Blueprint can be found at <http://www.exchangenetwork.net/e-enterprise/>

The EPA intends to engage the public on many aspects of the E-Enterprise initiative and will seek to obtain input on instances of cumulative regulatory burden so we can focus our efforts on harmonizing source rules and streamlining the implementation of regulatory transactions. Until an outreach plan is formalized, public comments will be drawn from individual rulemakings associated with E-Enterprise projects. Selected comments from two rulemakings are included below:

One of the key pilot projects for E-Enterprise will be streamlined fuels reporting under 40 C.F.R. Parts 79 and 80. The Agency recently finalized a rule that consolidated reporting dates and committed to the development of a streamlined reporting form. Public comments from that rulemaking shown below have been extracted from the Summary and Analysis of Comments (EPA-420-R-14-004). The source document is available at <http://www.epa.gov/otaq/documents/tier3/420r14004.pdf>. We are not aware of any negative comments against a unified reporting form.

### Chevron Products Company

Chevron supports the reduced reporting requirements for reformulated gasoline and EPA's focus on simplifying reporting to those elements critical to compliance. We strongly encourage EPA's notion of performing a comprehensive restructuring of the Part 79 and 80 regulations to improve comprehension, reduce compliance costs and simplify reporting. Identifying all of the various opportunities for consolidation and simplification would go well beyond the timing and scope of this rulemaking but we encourage EPA to immediately form a working group with industry representatives to pursue a follow-up rulemaking with the goal of proposing regulatory updates by the first quarter of 2014. [EPA-420-R-14-004, p. 6-22]

Chevron is very much in favor of EPA's proposal to align reporting dates between the various Part 80 programs and appreciates the extension of fourth quarter and annual reporting deadlines to March 31. We recommend that EPA should extend the attest engagement deadlines by an additional month from May 31 to June 30 to allow sufficient time for the significant data-gathering and back-and-forth communications required to complete those engagements. While it may be possible to begin some of this work ahead of the new reporting deadlines, it is much more effective to focus on the reporting itself before shifting to the attest activities. We believe that extending these annual deadlines will significantly reduce the risk of error and rework in annual compliance reporting. [EPA-420-R-14-004, p. 6-12]

### Marathon Petroleum Company

EPA has made regulatory streamlining a priority and we appreciate the Agency's efforts. We agree that regulatory streamlining will result in more efficient and less costly compliance. We support the elimination of unnecessary and outdated provisions. These provisions are independent of Tier 3 and should be promulgated in a final rule earlier than the Tier 3 final rule. We agree with the Agency that these are straightforward and should be implemented quickly. [EPA-420-R-14-004 p. 6-1]

### Phillips 66 Company

We are appreciative of the effort to streamline various portions of existing regulations. With changes over time, there are several areas that need "clean-up" and this effort will reduce confusion and burden on the regulatory parties. We offer the following comments on the proposed revisions as well as suggestions for other provisions that we feel would add value and should be considered. [EPA-420-R-14-004, p. 6-2]

Change in reporting dates – Overall, the concept of aligning the various reporting dates and being able to develop a unified and simplified reporting form is a good one. Providing additional time is beneficial. We appreciate the Agency providing this change. [EPA-420-R-14-004, p. 6-13]

Another of the key pilot projects for E-Enterprise will be the NPDES Electronic Reporting Rule under 40 C.F.R. Parts 122, 123, 127, 403, 501, and 503. The Agency published the proposed rule in the *Federal Register* on July 30, 2013, received and compiled 170 sets of public comments, and recently sent a draft supplemental Federal Register notice to OMB for review. Comments

received during the public comment period for that proposed rule are available from the docket, at Docket ID No. EPA-HQ-OECA-2009-0274. Several comments were supportive of the concept of electronic reporting, as reflected in the examples below:

Massachusetts Water Resources Authority (MWRA)

MWRA appreciates that the proposed rule [NPDES Electronic Reporting Rule] will allow EPA to obtain, and provide to the public, a more complete picture of NPDES discharges – one that includes small as well as large discharges. Electronic data collection has the potential to reduce the errors in ICIS-NPDES and also allow errors to be corrected in a more timely way. In summary, MWRA generally supports the idea of phased-in electronic reporting, provided data can be accompanied by qualifying comments. Document No. EPA-HQ-OECA-2009-0274-0263-A2.

Metropolitan Sewer District of St. Louis (MSD)

In general MSD supports the purpose of the rule [NPDES Electronic Reporting Rule] in moving to electronic reporting for many NPDES related activities. We agree that electronic reporting will likely provide for better data recording and management by EPA and authorized states, tribes, or territories. Some portions of the proposed rule will also support communities like MSD in their continued efforts in transparency and to provide the public with uncomplicated access to quality information which is free of errors due to multiple data entry points. Document No. EPA-HQ-OECA-2009-0274-0364-A2.

North East Biosolids & Residuals Association (NEBRA)

We support the overall concept of the proposed rule [NPDES Electronic Reporting Rule] and agree that, if implemented thoroughly with considerable support, it might achieve the benefits stated in the *Federal Register* discussion. The increased availability of data would serve to enhance public understanding of wastewater treatment and biosolids management...NEBRA feels that the proposed rule merits further consideration, but that the details of the proposed electronic reporting system are critically important and will determine whether or not the system is a success. Document No. EPA-HQ-OECA-2009-0274-0288-A1.

United States Steel

U. S. Steel generally supports the rule [NPDES Electronic Reporting Rule] and its goals, such as publically sharing discharge information, improving the Agency's decision making capabilities, and enhancing Agency resources through minimizing expenditures for monthly reporting. Document No. EPA-HQ-OECA-2009-0274-0268-A2.

**Monthly Reports on Section 404 Permits**

The Fiscal Year 2014 Omnibus directed EPA to report monthly on the number of Section 404 permits under EPA's review including the date received, the number of days each permit has been under review, the "DA number", the permittee, the project name, the permit type, geographical information (county and State), and where action was taken on a permit the report should include

disposition of each permit, and the date issued or remanded. The information requested aligned with a table the Agency provided following the FY13 budget hearing when a table was requested by the Committee. Nevertheless, the Agency has yet to submit the required reports for February and March.

**Calvert Q26:** Why has the Agency failed to meet the deadlines for February and March and when will the Agency submit the required reports?

**Answer:** The EPA and the Army Corps of Engineers worked on this report. The first report was delivered to the Hill on May 16, 2014 and identified the permits that the EPA reviewed and commented upon in the first quarter of FY 2014.

**Calvert Q27:** Please provide for the record all monthly reports due to the Committee that have not been submitted as of the time of EPA's response to questions for the record.

**Answer:** Subsequent reports will be sent following coordination between EPA and the Corps and after OMB review.

### **Formaldehyde Rule/Regulation**

**Calvert Q28:** What is the anticipated timing for completing work on the regulations for Formaldehyde emissions in composite wood products?

**Answer:** Since proposing the rules to implement the Formaldehyde Standards for Composite Wood Products Act (TSCA Title VI) on June 10, 2013 (78 FR 34795 and 78 FR 34820), the U.S. Environmental Protection Agency (EPA) has twice granted extensions to public comment periods for both proposals, as requested by numerous commenters. In addition, the EPA, on April 8, 2014 (79 FR 19305) reopened until May 8, 2014, the comment period for the proposed rule to implement TSCA Title VI emission standards (78 FR 34820) to seek additional public input regarding potential modifications to the Agency's proposed treatment of laminated products. The EPA also announced a public meeting, held April 28, 2014, to provide opportunity for further public comment on this set of issues. Based on input from public meeting participants, the EPA extended the comment period related to the treatment of laminated products under the regulation until May 26, 2014. The Agency will consider all information received from commenters on this subject in developing the final rule, which is expected to be made final late this calendar year.

**Calvert Q29:** Is the Agency's intention to harmonize EPA regulations with the California Air Resources Board (CARB) with respect to laminated products as directed by Congress? If so, why did EPA's initial proposal include laminators when California expressly exempts laminators?

**Answer:** The EPA is in regular communication with the California Air Resources Board (CARB) and is striving to ensure that provisions in EPA's final rule(s) are compliant with the Formaldehyde Standards for Composite Wood Products Act (TSCA Title VI) formaldehyde emission standards while aligning, to the extent possible and practical, with the regulatory requirements in California.

It is important to note that TSCA Title VI departs from CARB's Airborne Toxic Control Measure in several ways that have required careful harmonization.

The Act establishes formaldehyde emission standards for hardwood plywood, particleboard, and medium-density fiberboard that are identical to the emission standards in CARB's regulation. The Act also includes laminated products on the list of composite wood products to be regulated under TSCA Title VI, while CARB has an exemption for these products. With respect to these laminated products, Congress did provide the EPA with the authority to modify the definition of laminated product and exempt some or all laminated products from the definition of hardwood plywood pursuant to a rulemaking under TSCA Title VI, which shall be promulgated "in a manner that ensures compliance with the [statutory] emission standards."

The information available to the EPA at the time the initial proposal was issued did not indicate that laminated products would be in compliance with the emission standards, and therefore the Agency did not propose an exemption for all laminated products from the proposed regulations. The EPA did, however, propose to exempt laminated products that are made with compliant cores and laminated with "no-added-formaldehyde" resins because we concluded that such exemptions would be consistent with the statutory directive.

On April 8, 2014, the EPA re-opened the comment period for the proposed implementation rule to seek additional public input regarding potential modifications to the EPA's proposed treatment of laminated products. On April 28, 2014, the Agency held a public meeting at the EPA Headquarters in Washington, D.C. Based on a request from the public, the EPA extended the comment period for comments related to the treatment of laminated products under the regulation until May 26, 2014. The EPA will consider all information received from commenters as the Agency makes decisions on how to proceed on laminated products when preparing the final regulations.

**Calvert Q30:** Can the Agency assure this Subcommittee that EPA's final formaldehyde rule will not be overly burdensome to laminators?

**Answer:** The EPA is very sensitive to the potential impact of these requirements on the American manufacturing sector. In the development of the proposals, the EPA engaged numerous stakeholders, including small businesses, many of which served as Small Entity Representatives providing input to the Small Business Advocacy Review (SBAR) Panel for these proposed regulations. The EPA took their input, and the SBAR Panel deliberations, into account in designing the proposed exemption for laminated products.

In ongoing efforts to reach out to potentially affected stakeholders, the EPA has met and continues to meet with companies and trade associations that represent, among other members, producers of laminated products. The Agency has specifically requested data on formaldehyde emissions from laminated products in addition to seeking comments and information on the proposed definition of laminated products. As part of this effort, EPA re-opened the comment period for the proposed implementation rule on April 8, 2014, to seek additional public input regarding potential modifications to the EPA's proposed treatment of laminated products. On April 28, 2014, the Agency held a public meeting at EPA Headquarters in Washington, D.C. Based on

a request from the public, the EPA extended the period for comments related to the treatment of laminated products under the regulation until May 26, 2014. The EPA will consider all information received from commenters as the Agency makes decisions on how to proceed on laminated products when preparing the final regulations.

### **Radon State Grants**

Tough choices need to be made when crafting a budget; however, the proposal to terminate the Radon program grants warrants a second look particularly when 21,000 lung cancer deaths are attributed annually to radon exposure.

**Calvert Q31:** Why has the Administration again proposed this grant program for termination?

**Answer:** The State Indoor Radon Grants (SIRG) program was established by Congress to fund the development of states' capacity to raise awareness about radon risks and promote public health protection by reducing exposure to indoor radon gas. After 26 years in existence, the radon grant program has increased states' technical expertise and capacity to raise awareness about radon risks and promote public health protection by reducing exposure to indoor radon gas. Eliminating the SIRG program is an example of the difficult choices the agency has made in this budget to help meet the nation's fiscal challenges. The agency will focus on driving action at the national level, with other federal agencies, through the Federal Radon Action Plan. Released in June of 2011, the Action Plan aims to increase radon risk reduction in homes, schools, and daycare facilities, as well as radon-resistant new construction. It contains both an array of current federal government actions to reduce radon risks and a series of new commitments for future action. More information about the Action Plan and its progress is available at: [http://www.epa.gov/radon/action\\_plan.html](http://www.epa.gov/radon/action_plan.html).

**Calvert Q32:** If States are capable of handling delegated responsibilities for this program within their budgets, why is there a \$21.5 million increase for grants to fund base state air programs, and a \$25 million increase for state water programs? There seems to be a disconnect in the Agency's view that States have ample budgets to handle some programs but not others.

**Answer:** As you note, funding for some of the Agency's grant programs is increased in the FY 2015 President's Budget to continue prioritizing support for our state and tribal partners, the primary implementers of environmental programs. Requested increases over enacted levels recognize the importance of state partners in the progress made to provide air that is safe to breathe, water that is safe to drink, cleaner land, and safer chemicals. For example, the FY 2015 President's Budget request for increases to the state air grant programs reflect the need for states to implement Clean Air Act obligations with regard to developing plans to reduce greenhouse gases.

Over the 26 years of its existence, EPA's radon program has provided important guidance and significant funding to help states develop and implement their own programs. As state radon programs continue their work, EPA is proposing to eliminate the State Indoor Radon Grants and will focus agency efforts towards maintaining public outreach efforts, encouraging action in the marketplace, and driving progress at the federal level.

### **New Las Vegas Office Building**

The budget re-proposes a \$12 million increase to design a new building in Las Vegas to consolidate EPA's personnel. EPA's lease with UNLV is set to expire in 2015, and it is unlikely that it will be renewed. As such, EPA needs to find other space for its lab personnel. While there is a great deal of unused commercial space in Las Vegas, the Agency proposes to build a new building.

**Calvert Q33:** The \$12 million requested for FY15 is simply to design the building. What are the anticipated construction costs?

**Answer:** EPA anticipates that construction for a Las Vegas laboratory will cost approximately \$70.5 million.

**Calvert Q34:** Why propose new construction rather than reusing existing, available space?

**Answer:** EPA made the decision based on information provided by GSA as part of a market survey conducted within the last 2 years. GSA has stated that although GSA does not have a direct role in the construction project to meet EPA Las Vegas facility requirements, the long term nature of EPA's needs suggests that federal construction is a more cost effective solution than leasing a comparable facility. A detailed cost benefit analysis found that a consolidated facility would yield a total savings to the Agency of \$15 million over 20 years in comparison to leasing space. So far no existing available space has been identified that meets EPA's specialized laboratory requirements.

**Calvert Q35:** Was this a recommendation included in EPA's lab study?

**Answer:** The option for an EPA-owned Las Vegas laboratory was included in The Lab Study. The Lab Study only considered alternatives where EPA would have an ORD laboratory in Las Vegas. The Smith Group is scheduled to issue the "EPA Nationwide Laboratory Assessment – Report of Findings" in June 2014 and the National Academy of Sciences (NAS) is scheduled to issue its report in September 2014. After receiving final input from the Smith Group and NAS, The Science and Technology Policy Council will issue a final Lab Study in the first quarter of FY 2015. The draft report shows that moving to an EPA-owned facility will be more cost effective than leasing.

### **Superfund Budget**

The 2015 budget proposes \$1.16 billion for the Superfund program, which includes a \$43.4 million increase for the cleanup programs. With this funding, the budget justification indicates that funding would initiate cleanup construction work on four to six construction projects. That would still leave 30 sites unfunded at the end of fiscal year 2015. By definition, these are the most toxic sites in the United States, so it is important that we clean these up.

**Calvert Q36:** The 2015 budget proposes \$1.16 billion for the Superfund program, which includes a \$43.4 million increase for the cleanup programs. With this funding, the budget



justification indicates that funding would initiate cleanup construction work on four to six construction projects. That would still leave 30 sites unfunded at the end of fiscal year 2015. By definition, these are the most toxic sites in the United States, so it is important that we clean these up.

Has the Agency developed estimates for what level of funding is necessary to initiate cleanup at all the unfunded sites that stand ready for cleanup?

**Answer:** Resources for the Superfund Remedial Program has declined from the FY 2011 enacted level of \$605 million to \$500 million in FY 2014, creating a backlog of 22 new projects that were ready to start construction at the end of FY 2013. With additional new projects ready to initiate construction in FY 2014, the potential backlog entering FY 2015 was projected to increase to approximately 30 projects. Since the development of the EPA budget justification, the backlog of site construction starts that was expected for FY 2015 has been reduced. This reduction is a result of settlements achieved by the EPA Superfund Enforcement Program and effective financial and project management efforts that are allowing the Agency to deobligate unused funds and redirect those funds to new construction projects in FY 2014. These efforts will reduce the unfunded new construction backlog by approximately 15-20 projects, resulting in approximately 10-15 projects lacking construction funds at the beginning of FY 2015.

The remaining 10-15 unfunded projects would need approximately \$45 million to start cleanup construction. The final estimated cost to complete the construction projects range from \$2 million to more than \$50 million depending on the project. As with all construction projects, final costs are likely to vary as work progresses in the field.

The additional \$43.4 million proposed for the Superfund Remedial Program in the FY 2015 President's Budget (for a total of \$543.4 million for the Superfund Remedial program) will contribute to reducing the unfunded new construction backlog by funding approximately 4-6 new construction projects with those funds. This additional funding will also support pipeline activities such as remedial investigations, feasibility studies, and remedial designs which are critical steps prior to construction.

### **State Cost Share for EPA Grants**

Currently States are required to provide a 20% match to grants from the Clean Water and Drinking Water State Revolving Funds, a 25% match for Alaska Native Villages and other water related implementation grants, a 40% match for most air and radon grants, and a 50% match for pesticide program implementation and pollution prevention grants.



**Calvert Q37:** Clearly this is an outgrowth from multiple authorizing statutes enacted at various different times. From the Agency's vantage point, what are the potential pitfalls associated with harmonizing the required state match for EPA STAG grants?

**Answer:** Harmonizing the required state match for EPA STAG grants, depending on the required match amount, could arbitrarily increase or decrease the resources devoted to a particular program without considering the unique resource needs of each program. It should be noted that for EPA STAG grant programs eligible for inclusion in EPA Performance Partnership Grants (PPGs), the Agency is able to provide States flexibility in addressing matching share requirements. Under a PPG, States provide an aggregate match for the programs included in the PPG. This relieves a State from having to provide matching funds from each of the covered programs. Instead, if a State lacks matching funds for a particular program, but has an overmatch of State monies in another program for reasons such as the availability of additional appropriations from the State's general fund or revenue from State permit fees, it can use the overmatch to meet the PPG aggregate match.

### **IRIS Assessment of Inorganic Arsenic**

The Consolidated Appropriations Act for 2012 directed the Agency to contract with the National Academy of Sciences (NAS) for a study of the cancer and non-cancer hazards from oral exposure to inorganic arsenic. Pursuant to that directive, EPA contracted with the NAS to provide advice to the Agency on the approach proposed for its hazard assessment of inorganic arsenic and then to conduct a peer review of the ultimate IRIS assessment. The NAS published its interim report on November 7, 2013 entitled, "Critical Aspects of EPA's IRIS Assessment of Inorganic Arsenic".

**Calvert Q38:** The NAS Interim Report recommends a data-driven approach for assessing multiple health effects of inorganic arsenic as opposed to the Agency's typical default approaches. In using a 'data-driven' approach, does the Agency agree that the IRIS assessment should consider all available and defensible evidence, including recent research papers, and not just data compiled by a date certain?

**Answer:** Yes, the Agency agrees that the IRIS assessment for inorganic arsenic will use all available and defensible scientific evidence to reach qualitative and quantitative risk assessment conclusions. A data-driven approach is consistent with the scientific principles of the Agency and only in the absence of scientific information does the Agency utilize default approaches. Further, the NAS Interim Report has provided the Agency with specific guidance regarding the approaches to be utilized in the IRIS inorganic arsenic assessment, and the Agency is committed to implementing them. In addition, the NAS recommended development of explicit and transparent stopping rules for consideration of new evidence in the recent *Review of EPA's Integrated Risk Information System (IRIS) Process* (May 2014). Therefore, EPA will conduct an update of the literature search for the arsenic assessment by July 2014 and incorporate pertinent new peer reviewed literature, as appropriate, into the revised draft assessment that will be released for public comment just prior to external peer review.

**Calvert Q39:** Does the Agency agree that recent scientific evidence exists for the finding of a safe threshold for low dose exposure to inorganic arsenic, particularly for cancer effects?

**Answer:** The Agency is currently developing the IRIS assessment for inorganic arsenic. This process involves a systematic review of all the available scientific information for health effects related to inorganic arsenic exposure and the development of qualitative and quantitative methods, as was recommended by the NAS, to determine the human health risk at low dose exposures to inorganic arsenic. At this point in the process, EPA has not yet made a determination regarding dose response issues and is committed to evaluating potential human health risks in a transparent and collaborative manner with the Agency's partners, stakeholders, and the public.

**Calvert Q40:** The NAS 2008 Report: "Science and Decisions: Advancing Risk Assessment," frequently referred to as the "Silver Book" recommended that EPA consider the regulatory impacts of its IRIS hazard assessments. The proposed 2010 IRIS assessment for inorganic arsenic would have driven regulatory standards below naturally occurring background levels in soil and water. At the time, many within and outside EPA were highly critical of the proposed increase in the cancer slope for inorganic arsenic. The Committee continues to be concerned that EPA's IRIS assessments should consider the "real world" regulatory and risk management implications of its hazard assessments. Will the reforms of the IRIS program result in more realistic risk values, particularly for inorganic arsenic?

**Answer:** EPA is confident that the enhancements to the IRIS program will result in a scientifically valid risk assessment and, subsequently, that EPA's risk management process will result in appropriate regulatory standards for inorganic arsenic. It is important that risk assessment be designed to fully address the needs of decision makers and risk managers. It is equally important that the risk management process be distinct from this characterization of health risks. The application of human health risk information, such as the inorganic arsenic IRIS assessment, for risk management purposes, is a policy decision. Issues of feasibility and cost are considerations of risk management and should not be directly driven by dose response findings. The full process presented in the Silver Book is a continuum from problem formulation through risk management with "real world" considerations considered at the risk management stage. Scientists, risk assessors, and managers inside and outside the Agency provided valuable input into the scoping and planning of the IRIS assessment for inorganic arsenic. The scoping and planning were conducted at an Agency meeting in September 2012 and a public stakeholder meeting was held in January 2013. This scoping and planning effort resulted in an Assessment Development Plan (ADP) which was submitted to the NAS in May 2013. The NAS provided a favorable review of the ADP and made further recommendations to improve the plan. The revised ADP, incorporating the NAS recommendations, was released with the inorganic arsenic literature search and evidence tables in advance of a public discussion to be held June 25-27, 2014.

**Calvert Q41:** What is the current projected date for posting of the draft IRIS assessment of inorganic arsenic for public review and comment?

**Answer:** EPA estimates it will release the draft assessment for public review and comment in late 2014 or early 2015.

## IRIS Assessment of Formaldehyde

**Calvert Q42:** It is our understanding that EPA is organizing a workshop on formaldehyde to address critical science issues prior to the issuance of the revised IRIS assessment for formaldehyde. We/I applaud this effort to meet the directive laid out in Chapter 7 of the National Academy of Sciences' report on the prior formaldehyde IRIS assessment, which made clear that "strengthened, more integrative and more transparent discussions of weight of the evidence are needed." What is EPA doing to ensure that this workshop leads to actionable results that can support an improved, science-based assessment that balances all of the available evidence? For example, has your staff been able to secure the participation of the key experts in the areas to be discussed? Will the proceedings be made public?

**Answer:** As you note, the purpose of this public workshop, which was held on April 30 and May 1, 2014, was to inform the development of the IRIS assessment for formaldehyde, and the discussion focused on critical scientific issues, including the following:

1. Epidemiological research examining the potential association between formaldehyde exposure and lymphohematopoietic cancers (leukemias and lymphomas);
2. Mechanistic evidence relevant to formaldehyde inhalation exposure and these types of cancers; and
3. The influence of formaldehyde that is produced endogenously (by the body during normal biological processes) when assessing the health hazards (especially excess cancer risk) of inhaled formaldehyde.

This workshop is part of EPA's efforts to use the best available science to develop IRIS assessments and the workshop discussions will provide important information that will be useful for the development of the revised draft assessment. An agenda is available on the webpage for the formaldehyde workshop, where you can see that key experts with a range of perspectives and expertise participated (<http://www.epa.gov/iris/irisworkshops/fa/index.htm>). EPA solicited input from the public on topics and potential speakers for the workshop and worked with a contractor to obtain a diverse set of participants with relevant expertise. The workshop was available by webinar to heighten public access to the meeting and discussion and input was encouraged from both in person and webinar attendees. Materials from the workshop also will be made publicly available.

**Calvert Q43:** Given the importance of the formaldehyde IRIS assessment as a test case for IRIS reform, would EPA be receptive to contracting with the National Academy of Sciences to conduct a review of the revised draft IRIS assessment of formaldehyde to ensure that the NAS' 2011 recommendations on an earlier draft of the assessment have been fully addressed?

**Answer:** Full and robust implementation by the IRIS Program will continue as an evolving process with input and feedback from the public, stakeholders, the NRC committee reviewing the IRIS assessment development process, and the newly formed Science Advisory Board (SAB) Chemical Assessment Advisory Committee, which will help ensure consistency across assessments.

As the Agency has indicated previously to the committee, EPA's plan is to conduct an independent scientific peer review of the revised draft formaldehyde assessment through the SAB. In addition to the peer review, EPA will request that the SAB evaluate whether there are scientific issues raised by the NRC that have not been adequately addressed by the EPA. EPA will then determine if a second NAS review is needed. EPA agrees that the formaldehyde IRIS assessment is important and is receptive to suggestions as to how this assessment and others can be improved, including approaches for peer review.

**Calvert Q44:** Given that the formaldehyde assessment is in a unique position with regard to the timing set out in EPA's proposed stopping rules, will EPA continue to accept and consider new data through the comment period for the revised IRIS assessment?

**Answer:** The NAS recommended development of explicit and transparent stopping rules for consideration of new evidence in the recent *Review of EPA's Integrated Risk Information System (IRIS) Process* (May 2014). Consistent with these recommendations, EPA will conduct an update of the literature search for the IRIS formaldehyde assessment and incorporate pertinent new literature, as appropriate, into a revised draft assessment that is released for public comment just prior to external peer review. EPA's current plan is to update its current literature search in September 2014. After that update to the literature search, EPA's process is to add additional studies only if such studies would impact the credibility of an assessment's conclusions because such studies reasonably might significantly change the key conclusions of the assessment.

The IRIS process stopping rules are available at [http://www.epa.gov/iris/pdfs/IRIS\\_stoppingrules.pdf](http://www.epa.gov/iris/pdfs/IRIS_stoppingrules.pdf). An excerpt of that text is below:

"In general, new studies can be included until a few months before an assessment is released for review. During the early review steps and before the public peer review meeting, new studies may be included, though it is important not to delay the assessment's progress by adding new studies or analyses that do not affect the assessment's conclusions. It also is important that an assessment not become out of date by repeating the early review steps."

"After peer review, the presumption shifts to not including new studies unless they have an impact on the credibility of an assessment's conclusions. Examples might be a strong new study that indicates a heretofore undiscovered health effect, or a strong new study that might change, in either direction, a major conclusion. Quantitatively, such a study would likely have the ability to significantly influence the selection of health effect or uncertainty factors for deriving a toxicity value, or to provide important mechanistic insights that would change the approach to dose-response assessment. On the other hand, a new study that merely confirms existing studies would not need to be added to an assessment that has undergone public peer review."

### **Design for the Environment (DfE)**

**Calvert Q45:** EPA's Design for the Environment program, which seeks to characterize certain chemicals and products as not just safe, but "safer." How is EPA planning to align the non-regulatory DfE labeling program with its regulatory function?

**Answer:** EPA uses a three-part strategy for addressing potential risks from existing chemicals:

- Identifying chemicals for risk assessment and taking actions as appropriate.
- Increasing opportunities for industry to move toward using safer chemicals, such as those described in EPA's Design for the Environment (DfE) and Green Chemistry programs.
- Increasing public access to data on chemicals that have been developed by EPA or provided by industry.

This multi-pronged strategy works to comprehensively address and ensure the safety of chemicals. The Toxic Substances Control Act provides the basis for EPA's chemicals management regulatory program and for the existing chemicals that are legally allowed in U.S. commerce. DfE, a voluntary program, is designed to recognize leadership in chemical safety.

EPA uses risk assessment under TSCA in a regulatory setting to manage chemical risks by setting levels at which exposure to a given chemical poses an acceptable risk. More specifically, under TSCA's Section 5 authority for new chemicals, EPA utilizes a range of actions to prohibit or limit the use of a chemical if EPA determines that the substance may present an unreasonable risk of injury to human health or the environment. EPA's DfE Program uses hazard assessment to identify the safest chemicals that can cost-effectively satisfy a functional need. The voluntary DfE program promotes innovation, and helps consumers and institutional purchasers quickly identify products that are safer for their customers, children, and pets.

The DfE program successfully works in partnership with industry and other stakeholders to recognize innovation in the design and use of safer chemicals. It is our experience that most companies that manufacture chemical-based products want to use the safest possible high-performing chemical ingredients. The DfE Safer Product Labeling Program also empowers consumers to make informed choices about safer household and cleaning products.

**Calvert Q46:** DfE's product ecolabeling program encourages the reformulation of certain consumer products, but perhaps without regard to society-wide impacts on clean air and water if products as they are made differently. How does EPA consider the full environmental impacts of "safer" or "greener" products, and that net impacts on human health and the environment are in fact lower?

**Answer:** For 15 years, the EPA's Design for the Environment (DfE) Program has applied the Agency's expertise in chemicals, toxicology, and environmental science to evaluate chemical formulations and allow use of the DfE label on products that perform well and contain the safest possible ingredients. All labeled products must meet DfE's highly protective Standard for Safer Products and stringent component-class criteria. The DfE scientific review team evaluates each ingredient for potential human health and environmental effects based on the best currently available scientific information, EPA predictive models, and expert judgment, to ensure that candidate products contain only ingredients that are among the safest in their functional class. DfE also has continuously strengthened the life cycle aspects of its review, focusing on chemical exposures during use and end-of-life, the "hot spots" in the life cycle of chemical-based

products. In addition to protecting human health, the requirements of the DfE standard protect wildlife and aquatic organisms. DfE's standard also includes requirements for other important areas that impact clean air, like volatile organic compounds. The program includes a first-of-its-kind ingredient disclosure provision that will make the safer chemistry aspects of labeled products more visible and valued. DfE has now labeled about 2,500 safer products for a wide variety of consumer, institutional, and industrial uses.

### **New Source Performance Standards and CCS**

In the proposed New Source Performance Standard rule for new electricity plants, the Agency states that the proposed standard for a new natural gas combined cycle power plant (1000 pounds of CO<sub>2</sub> per megawatt hour) is being met by over 90% of those types of plants in operation today.

**Calvert Q47:** How many coal power plants in operation today can meet the proposed standard (1,100 pounds of CO<sub>2</sub> per megawatt hour) for new coal power plant?

In previous EPA testimony, the Agency says the proposed standards for a new coal power plant "reflect the *demonstrated performance* of efficient, low carbon technologies that are currently being used today."

**Answer:** The EPA proposed a New Source Performance Standard for CO<sub>2</sub> emissions from fossil fuel fired Electric Generating Units (EGUs). EPA based this standard on the proposed determination that new efficient generating technology implementing partial carbon capture and storage technology (CCS) is the best system of emission reduction adequately demonstrated (BSER) for those sources. EPA based this determination, in turn, on a review of existing projects that implement CCS, existing projects that implement various components of CCS, planned CCS projects, and scientific and engineering studies of CCS. The major components of CCS have been demonstrated. In addition, they have been in commercial use for years. For example, the Dakota Gasification Company's Great Plains Synfuels Plant in Bismarck, ND, has been demonstrating "partial CCS," capturing 50% of the CO<sub>2</sub> from a coal gasification plant, compressing and transporting it through a 205 mile pipeline to oil fields, and then selling it for enhanced oil recovery (EOR) for over ten years. According to the District Court holding referenced in the proposed rule (Portland Cement Ass'n v. Ruckelshaus, 486 F.2d 375 (D.C. Cir. 1973), a standard of performance is "achievable" if a technology can reasonably be projected to be available to new sources at the time they are constructed that will allow them to meet the standard.

**Calvert Q48:** Are there any full-scale coal power plants currently operating in the US that are using Carbon Capture and Sequestration (CCS) technology?

**Answer:** The technologies for all the major components of CCS – capture, transportation, and storage – are available, integrated, and proven. For example, AES Warrior Run in Cumberland, Maryland, is currently capturing carbon pollution. There also are large-scale, coal-fired industrial facilities capturing millions of tons of carbon pollution today, such as Dakota Gasification Company's Great Plains Synfuels Plant and others.

**Calvert Q49:** To be clear, while CCS components have been developed, are there any electric generating plants using a fully integrated CCS system in practice? If not, how does the Agency explain proposing a standard without knowing whether it is achievable in practice?

**Answer:** A large-scale commercial project, Air Products in Texas, has been successfully capturing CO<sub>2</sub> from Steam Methane Reformers with EOR for over a year. Other fully-integrated coal gasification and conventional large-scale coal-fired power plants are under construction and scheduled to come online, as early as the end of this year, that will capture carbon pollution (for example Southern Kemper and the Boundary Dam). The legal standard for “achievable” technologies applied by the proposed rule requires that the BSER technology can reasonably be projected to be available to new sources at the time they are constructed that will allow them to meet the performance standard.

**Calvert Q50:** When EPA evaluated whether the costs of electricity from a new power plant using CCS is reasonable, did EPA rely on the cost of the technology at its current status as an emerging technology for power plants or what the costs are projected to be when CCS reaches the status as a fully mature technology?

**Answer:** The EPA analyzed many sources of information when choosing to propose that partial CCS is the best system of emission reduction (BSER) for new fossil fuel-fired utility boilers. That analysis included work completed by DOE’s National Energy Technology Laboratory (NETL) that supported the feasibility of partial capture, but it also included the review of existing commercial scale facilities using CCS technology and the diverse methods for capturing CO<sub>2</sub> (e.g., the Dakota Gasification Company’s Great Plains Synfuel Plant and Coffeyville Resources Ammonia Fertilizer Complex), pilot scale plants using CCS technology (e.g., American Electric Power’s (AEP) Mountaineer Plant and Southern Company’s Plant Barry), and planned facilities using CCS technology (e.g., Southern Company’s Kemper County Energy Facility, the Boundary Dam Project, the Texas Clean Energy Project, the Hydrogen Clean Energy California Plant). After reviewing many reports, studies, projects, and stakeholder input, the EPA determined partial capture of CO<sub>2</sub> best meets the requirements for BSER. It ensures that any new fossil fuel-fired utility boiler or Integrated Gasification Combined Cycle (IGCC) unit will achieve meaningful emission reductions in CO<sub>2</sub>, and it also will encourage greater use, development, and refinement of CCS technologies. CCS technology has been adequately demonstrated and its implementation costs are reasonable.

**Calvert Q51:** Is there a difference in cost between CCS in its current status and when it reaches status as a fully mature technology?

**Answer:** Costs are reasonably expected to be higher for “first-of-a-kind” projects; however, we expect that the types of coal projects with CCS that are moving forward today will help further lower costs of CCS technology for future plants.

**Calvert Q52:** The Department of Energy testified recently that early stage deployment of CCS for new power plants would increase the costs of wholesale electricity by approximately “70 to 80 percent.” This testimony came from Mr. Julio Friedmann, Deputy Assistant Secretary who is an expert in CCS technologies. What has the Department of Energy told EPA about how long

will it be before CCS is considered a fully mature technology and cost competitive for power plants?

**Answer:** The incremental costs cited by DOE vary by the method of capturing considered and are estimates for costs at a particular plant relative to another plant. However, increases or decreases in cost at a particular plant do not significantly change retail prices paid by consumers, which are derived based on the cost of generation and transmission across the power system. The standards we have proposed can be met using partial CCS and are not expected to have a significant impact on electricity rates across the country.

The EPA's assessment of partial capture CCS found that:

- For a new supercritical pulverized coal (SCPC) power plant, the change in the levelized cost of electricity (LCOE) ranges from a decrease of \$4/MWh (4%) with a relatively high market value for enhanced oil recovery (EOR) to an increase of \$18/MWh (20%) assuming no market for EOR. It is important to note that the climate and co-benefits associated with partial CCS on SCPC ranges from \$16-\$22/MWh (assuming 3% Social Cost of Carbon (SCC)).
- For a new integrated gasification combined cycle (IGCC) facility, the change in the LCOE ranges from no difference in cost with a relatively high market value for EOR to an increase of \$12/MWh (12%) assuming no market for EOR. The climate and co-benefits associated with partial CCS on IGCC is approximately \$7.5/MWh (assuming 3% SCC).

Again, these figures are estimates for changes in the cost of electricity for new SCPC and IGCC facilities and are not estimates of changes in electricity prices paid by consumers. The Regulatory Impact Analysis (RIA) and other documents associated with this rulemaking can be found here: <http://www2.epa.gov/carbon-pollution-standards/2013-proposed-carbon-pollution-standard-new-power-plants>.

### **Perchlorate**

It is the Committee's understanding that the EPA Office of Water continues to pursue the establishment of a maximum contaminant level for perchlorate under the Safe Drinking Water Act despite the National Academy of Sciences determination that exposure to perchlorate at environmental levels has little to no effect on humans and previously Agency determinations (OW and OIG) that perchlorate fails to meet the criteria for regulation under the Safe Drinking Water Act.

**Calvert Q53:** Please describe for the Committee, the Office of Water's ongoing activities related to perchlorate in fiscal year 2014 and those related activities proposed within the FY 2015 budget, including those activities that assist communities with known perchlorate exposures as well as any efforts to revise the reference dose or promulgate additional regulations.



**Answer:** In FY 2014, the EPA is implementing recommendations from the Science Advisory Board for deriving a Maximum Contaminant Level Goal (MCLG) for perchlorate. In accordance with the Safe Drinking Water Act, EPA requested comment from the Science Advisory Board (SAB) prior to proposing an MCLG and National Primary Drinking Water Regulation (NPDWR) for perchlorate. In its final report (May 2013), the SAB concluded that it is important for the EPA to consider sensitive life stages explicitly in the development of an MCLG for perchlorate. The SAB found that the most sensitive life stages are the fetus, neonates, and infants because these are the stages when thyroid-dependent brain development occurs. In addition, the SAB recommended that the EPA, “. . . derive a perchlorate MCLG that addresses sensitive life stages through physiologically-based pharmacokinetic/pharmacodynamic (PBPK) modeling based upon its mode of action rather than the default MCLG approach using the RfD and specific chemical exposure parameters.” EPA is collaborating with the FDA to implement the SAB recommendations.

In FY 2015, the EPA intends to complete PBPK modeling activities and conduct a peer review of the model. In addition, the Agency plans to conduct analysis of the best available science on occurrence, analytical methods and treatment technologies to remove perchlorate from drinking water, and associated costs and benefits.

Currently there is no drinking water regulation for perchlorate. However, to assist communities with known perchlorate exposures, the EPA released an interim health advisory to help states and water systems address perchlorate in drinking water.

### **Pesticide Registrations**

The Pesticide Registration Improvement Renewal Act of 2012 increased the minimum appropriated funding level required in order to allow EPA to collect registration service fees. However, since then the Committee has waived the minimum level to allow the pesticide program to continue to collect fees under tighter budgets.

**Calvert Q54:** Under the 2012 Act, what is the expectation for the percentage of the program that would be funded through appropriations vs. the percentage of the program funded through fees? Please provide a table with an annual breakdown. Please also include the actual percentages for FY13 and FY14 based on the final appropriations and fees collected. Please also include the proposed percentage under the FY15 President’s budget.

**Answer:**

<b>FY</b>	<b>PRIA Fees Collected</b>	<b>Maintenance Fees Collected</b>	<b>Appropriations</b>	<b>% of Program Funded by Appropriations</b>
2013	\$15.2M	\$27.015M	\$121.8M	$\$121.8/\$164.015 = 74\%$
2014	\$15.4M <sup>1</sup>	\$28.032M (as of April 9, 2014)	\$122.1M	$\$122.1/\$165.532 = 74\%$
2015	\$15.4M <sup>1</sup>	PRIA requires \$27.8M	\$122.1M <sup>2</sup>	$\$122.1/\$165.3 = 74\%$

<sup>1</sup> At this time, the amount of PRIA fees that will be collected in FY’14 and FY’15 is unknown. We have used the average annual PRIA fees collected over the past five years (FY’09 – FY’13) as an estimate of PRIA fees to be collected in FY’14 and FY’15.

<sup>2</sup> We have assumed the same amount of appropriated funds in FY’15 as was appropriated in FY’14.

**Calvert Q55:** Has EPA been able to meet the timelines for pesticide review included in the PRIA reauthorization? How does this compare to actions under PRIA-I or PRIA-II?

**Answer:** No, during the 3.5 years of PRIA-1 (FY'04 – FY'07), the on-time completion rate was 99.9%. During the five years of PRIA-2 (FY'08 – FY'12), the on-time completion rate was 99.3%. In FY'13 (the first year of PRIA-3), the on-time completion rate fell to 98.8% due to personnel furloughs. We expect that the partial government shutdown of October 2013 will have a significant impact on our FY'14 on-time completion rate, and we will evaluate that impact after the fiscal year ends on September 30, 2014. Below is a table containing the total number of actions completed and the number of those actions completed late under PRIA-1, PRIA-2, and PRIA-3.

	FY's	# of completed actions	# of actions completed late	% on time
PRIA-1	FY'2004 – FY'2007	4,273	3	>99.9%
PRIA-2	FY'2008 – FY'2012	7,892	55	99.3%
PRIA-3	FY'2013	2,084	25	98.8%

**Calvert Q56:** What were the minimum appropriation levels required under PRIA-I and PRIA-II?

**Answer:**

- For PRIA 1 (FY'04 – FY'07) the minimum appropriations trigger was \$122.4 million;
- For PRIA 2 (FY'08 – FY'12) the minimum appropriations trigger was \$122.4 million;
- For PRIA 3 (FY'13 – FY'17) the minimum appropriations trigger is \$128.3 million.

[For both PRIA 1 & PRIA 2, the minimum appropriations level was pegged at the FY 2002 level (\$126.2 million) with a COMPLIANCE clause that stated that EPA would be considered in compliance with the minimum appropriation level if that level was no more than 3% less than the FY 2002 appropriation level. PRIA-3 minimum appropriation level is pegged at the FY 2012 level (\$128.3 million) and there is no COMPLIANCE clause.]

### **Title 42 Authority**

EPA budget documents indicate that 23 Title 42 employees are on-board with an additional 12 recruitments underway.

**Calvert Q57:** When does the Agency estimate that all 12 recruitments will be on-board?

**Answer:** EPA estimates that all 12 recruitments will be on-board in the first quarter of FY 2015.

**Calvert Q58:** How does EPA's use of Title 42 authority compare and contrast to other agencies that utilize special Title 42 authority?

**Answer:** In 2010, the National Academies of Science's National Research Council reviewed EPA's Title 42 program. The Council commended EPA's prudent management of its Title 42 authority. It observed that Title 42 is helping EPA achieve its mission, identify and hire outstanding candidates, and retain top scientists; and it noted how Title 42 has enabled EPA to build new capacity and advance the state of science. The Council recommended that EPA be granted permanent Title 42 authority without a defined number.

In addition to the National Academies of Science's review, in 2012, the Government Accountability Office (GAO) assessed EPA's Title 42 program. The report highlighted that EPA has followed its policies and guidance in operating its Title 42 program. GAO also recognized that EPA incorporated modifications to its policy and guidance based on the recommendations made by the National Academies of Science's 2010 report.

Title 42 authority provides EPA with flexibility in hiring and pay and has allowed the Agency to more effectively compete with academia and private industry for top scientific and engineering talent. As a result, this authority has allowed EPA to make strides in the computational toxicology, risk assessment, and air pollution arenas. It is important to note that other federal agencies successfully use this authority, at greater numbers, to address environmental and health positions.

### **EPEAT**

EPA established the Electronic Product Environmental Assessment Tool (EPEAT) to serve a limited, but useful purpose: to allow federal purchasing managers to evaluate the relative environmental benefits of various information and communications technology products in order to make informed procurement decisions on product energy use and sustainability. Two Executive Orders and the Federal Acquisition Regulation stipulate that 95% of federal purchases of eligible products must be of devices included on the EPEAT registry. Over \$60 billion of federal contracts are affected. However, the organization which runs the program is neither in the government or run by industry.

**Calvert Q59:** Please explain how the EPA established the EPEAT tool with the Green Electronics Council of Portland, Oregon, how the EPEAT process works, and what EPA does on a daily basis to approve, in advance, the standards that the Council adopts?

**Answer:** EPEAT is an easy-to-use resource for purchasers, manufacturers, resellers, and others wanting to find or promote electronic products with positive environmental attributes.

In 2002, EPA provided a pollution prevention grant to a non-profit organization, Zero Waste Alliance, to convene a multi-stakeholder group to discuss ways to reduce the public health and environmental impacts of electronic products. This group developed a draft set of environmental performance criteria for computer desktops, laptops, and monitors, and a vision for an entity that would manage a registry of products meeting these criteria. EPA then conducted a

competitive grant competition in 2005 for seed funding for implementation of the EPEAT system by a host organization. The Green Electronics Council (GEC) was awarded this grant and launched EPEAT in 2006. EPA funding ended in 2008 and GEC continues to manage implementation of EPEAT with funding from subscriber fees. GEC maintains the EPEAT website and the EPEAT product registry, and documents the environmental benefits resulting from the purchase of EPEAT-registered products. EPA no longer provides financial assistance to GEC for the maintenance of the EPEAT product registry and web site.

The EPEAT registry includes products that meet the following environmental performance standards set via voluntary consensus based processes by ANSI-accredited standards development organizations:

- IEEE 1680.1-2009 Standard for the Environmental Assessment of Personal Computer Products
- IEEE 1680.2-2012 Standard for the Environmental Assessment of Imaging Equipment
- IEEE 1680.3-2012 Standard for the Environmental Assessment of Televisions

All of these standards include environmental performance criteria for:

- Reduction/elimination of environmentally sensitive material
- Materials selection
- Design for end of life
- Product longevity/life-cycle extension
- Energy conservation
- End-of-life management
- Corporate performance
- Packaging

The EPEAT registry currently lists computer desktops, notebooks, integrated systems, thin clients, workstations, displays, televisions, printers, copiers, scanners, fax machines, multifunction devices, digital duplicators, and mailing machines that meet the requirements of the relevant IEEE standards for these products.

EPA is actively involved in bringing technical expertise to the voluntary, consensus based standards development processes, along with other federal, state, and local government and non-governmental stakeholders. EPA participates in an advisory role to EPEAT by having a representative on the EPEAT Advisory Council. The role of the Advisory Council is to provide input on a variety of matters of importance to stakeholders related to the management of the EPEAT system, including issues related to implementing new standards for electronic products in the EPEAT registry, verification against the standards, and the usability/operability of EPEAT. Decisions about which standards will be used in the EPEAT system are made by the EPEAT Board of Directors which EPA does not participate on.

**Calvert Q60:** Does EPA periodically examine alternate mechanisms or organizations in a competitive manner to identify the best service provider?

**Answer:** EPEAT is not a government-run program and EPA does not provide funds for the management of the EPEAT product registry or for the verification of products to standards.

In 2011, EPA conducted a grant competition process to facilitate the development of new voluntary consensus standard for additional electronic products. All proposals submitted underwent extensive review by a multi-stakeholder panel which included representatives of other federal agencies, an environmental non-profit organization, and industry. In addition to their written proposals, the applicants also conducted oral presentations for the panel. This panel rated the proposal of International Sustainable Development Foundation (ISDF) – the former parent organization of the Green Electronics Council (GEC) – the highest of all proposals submitted. In its deliberations, the panel concluded that ISDF had the most experience and was best positioned to receive this grant.

Initially, GEC was the only verifier of products for conformance to standards under EPEAT. Due to stakeholder input, GEC has moved to an open competition, multiple verifier systems, in which manufacturers have a choice of six different verifiers to work with to demonstrate conformance of their products to the standards. At this point, over 50 percent of all verifications conducted for EPEAT-registered imaging equipment and 100 percent of all verifications for televisions have been conducted by verifiers other than GEC.

**Calvert Q61:** How much does the Green Electronics Council receive annually from EPA and is this funding provided consistent with EPA's competition policies?

**Answer:** The Green Electronics Council (GEC) is not receiving any funds from the federal government for managing the EPEAT Product Registry or the verification of products to standards. EPA does have a cooperative agreement with the International Sustainable Development Foundation (ISDF) – the former parent organization of GEC – to facilitate the development of a server standard and one other standard to be determined. This cooperative agreement was awarded through a competitive process conducted in 2011 which was consistent with EPA's competition policy. Since this cooperative agreement was awarded, EPA has provided ISDF with \$176,000 in funding.

**Calvert Q62:** What right of ownership does EPA have with respect to the EPEAT tool if the Council has trademarked the EPEAT tool?

**Answer:** EPEAT is not a government-run program and EPA has no ownership rights with respect to EPEAT.

**Calvert Q63:** What processes does the Green Electronics Council use to garner input from U.S. companies and how does EPA participate in them? Does EPA arbitrate disputes between the Council and other partners?

**Answer:** The EPEAT Advisory Council is a non-fiduciary body formed to provide input and advice to EPEAT management and board. The Council draws volunteers from all of EPEAT's stakeholder groups, including representatives of manufacturing, purchasing, environmental advocacy, recycling, government, research, retail, and reseller interests. EPA is one of two federal

government representatives on the Advisory Council. DOE is the other representative. The EPEAT Advisory Council provides recommendations to the EPEAT Board of Directors, which makes all final decisions. The list of members of the EPEAT Advisory Council can be found at the following website: [www.epeat.net/advisory-council/](http://www.epeat.net/advisory-council/)

EPA does not arbitrate disputes between the Green Electronics Council (GEC) and other partners. EPA has, however, hosted a series of dialogues with stakeholders to discuss issues and to work toward a path forward on greener electronics.

**Calvert Q64:** The National Technology Transfer and Technology Act and OMB Circular A-119 require use of "open, consensus based standards" for federal purchasing decisions. Does the Agency affirm that the standards that the Council adopts are "open" and "consensus based" as required by law? Is the ultimate decision authority of the Council with respect to which standards and products it allows on its registry conformant with the NTTTA and OMB A-119?

**Answer:** The IEEE family of standards, which are the current standards that EPEAT requires conformance to, have been developed through an open, consensus-based process. IEEE is an ANSI-accredited standard development organization and IEEE standards follow a well-defined path guided by a set of five basic principles: due process, openness, consensus, balance, and right of appeal. In our role on the EPEAT Advisory Council, EPA ensured that the standards selection criteria developed for use by the Green Electronics Council are in alignment with the NTTAA and OMB A-119.

Current Executive Orders and subsequent Federal Acquisition Regulations (FAR) require federal purchasers to buy EPEAT-registered equipment. The FAR Council has set the requirements for federal purchasers based on the direction in the Executive Order.

### **Geographic Program**

EPA has proposed new language to implement projects in the Southern New England Estuary program.

**Calvert Q65:** Please explain what limitations currently exist and why this language is necessary.

**Answer:** The Southeastern New England Coastal Watershed Restoration Program (SNECWRP) encompasses the coastal land and water area from Westerly, Rhode Island to Pleasant Bay on Cape Cod. This language allows SNECWRP to issue grants for project implementation in that geographic area. Currently available authorities under the Clean Water Act present challenges because Section 104(b)(3) does not allow for implementation, while Section 320 does not allow for implementation in areas outside of defined National Estuary Program study areas (Buzzards Bay and Narragansett Bay watersheds). The proposed language would allow the program to provide grants for implementation in the entire defined Southeastern New England region, including southern Cape Cod and eventually Block Island, Martha's Vineyard, and Nantucket.

## Buy American

The FY 2015 President's budget proposes to remove the Buy American requirements for the use of iron and steel in SRF projects. However, the Agency's budget documents do not seem to address this change in law.

**Calvert Q66:** Please provide the Administration's position for the proposal to remove these requirements for FY15.

**Answer:** The Administration is not opposed to Buy American requirements for the SRFs, but generally deletes legislative riders from prior years in its requested appropriations language for the Budget.

## Payroll and FTE

**Calvert Q67:** What percent of the workforces are Grade 14s, 15s and SES and how does that compare to other Federal Agencies of similar size and mission?

**Answer:** EPA's data are pulled from the agency's HR system as of April 1, 2014. Data for NASA, DOE and NRC are pulled as of December 2013 (most recent available data) from Fedscope. EPA, NASA, DOE and NRC data capture permanent employees only. Fedscope data can be accessed at <http://www.fedscope.opm.gov/ibmcognos/cgi-bin/cognosisapi.dll>.

Percent of Employees (December 2013)			
	GS-14	GS-15	ES
EPA	18.3%	14.8%	1.8%
NASA	25.6%	25.3%	2.3%
DOE	16.5%	12.6%	3.3%
NRC	30.3%	25.2%	3.9%

**Calvert Q68:** How does the proposed level of \$57.2 million and 321.5 FTE for the EPA Inspector General compare to the size of the Offices of Inspectors General at the Department of Interior, Department of Agriculture, NASA and their respective budgets for fiscal year 2014 and 2015?

**Answer:** The information below was provided by OIGs at NASA, DOI, and USDA. EPA-OIG compared to DOI-OIG: EPA-OIG has 14% more proposed FTE than DOI-OIG. EPA-OIG's average salary is \$3.9 thousand less, and we have approximately 13% more proposed dollars.

EPA-OIG compared to NASA-OIG: EPA-OIG has 34% more proposed FTE than NASA-OIG. EPA-OIG's average salary is \$4.2 thousand more, and we have approximately 35% more proposed dollars.

EPA-OIG compared to USDA-OIG: EPA-OIG has 40% fewer proposed FTE than USDA-OIG. EPA-OIG's average salary is \$3.1 thousand less, and we have approximately 41% fewer proposed dollars. Because the USDA-OIG has more than 200 FTE more than EPA-OIG, we would suggest that it is not comparable in size to the EPA-OIG.

<b>AGENCY - OIG</b>	<b>FY2014 LEVELS DOLLARS/FTE in millions</b>	<b>FY2015 LEVELS DOLLARS/FTE in millions</b>	<b>FY2015 AVERAGE SALARY in thousands</b>
EPA	\$51.8 / 331.5	\$57.2 / 321.5	\$177.9
DOI	\$50.8 / 273	\$50.0 / 275	\$181.8
NASA	\$37.0 / 213	\$37.0 / 213	\$173.7
USDA	\$89.9 / 525	\$97.2 / 537	\$181.0

**Calvert Q69:** EPA's payroll request, Agency-wide is \$2.245 billion for 15,000 FTE. That is an average of \$149,633 per FTE. Is this the correct amount assumed in the budget per FTE? If not, provide the correct average and please explain the difference.

**Answer:** The EPA does not assume a specific agency-wide average compensation and benefits per FTE level cost when the budget is developed. Instead, the EPA looks at a finer level of detail based on actual expenditures at the office, appropriation and program project level. While not used to formulate the budget, the agency-wide average compensation and benefits per FTE requested for FY 2015 is \$149,633. This estimate includes payroll and benefits such as Workers' Compensation, transit subsidies, childcare subsidies, FSAFeds subscription fees and awards.

### **Administrator Priorities**

**Calvert Q70:** The FY14 Omnibus directed EPA in future budget justifications to identify funding in each program project that has been set aside for Administrator priorities and include a justification for the effort and any anticipated results. Does EPA's FY15 congressional justification comply with the requirement? If so, where are these funds identified?

**Answer:** The information on the funds set aside for the Administrator's priorities you requested was not included in the FY 2015 President's Budget request for EPA through an oversight. However, the attached table provides details on how these funds have been allocated, by program project, in the FY 2015 President's Budget. A total of \$4.75 million is in the Environment and Program Management Account and \$250 thousand is in the Science and Technology Account.

These funds which are set aside for Administrator priorities at EPA are contingency funds for the Administrator to use to address unforeseen issues that may arise during the year. These funds have historically been distributed in various program projects across the budget and used during budget execution to support critical unplanned issues. Since these funds are for unforeseen



needs, it is not feasible to identify anticipated results or precisely target what the funds will be needed for in advance to build specific justifications.

The EPA is preparing a report, as directed in the FY 2014 appropriations bill report language, which will describe the use of Administrator priority funds in FY 2012 and FY 2013.

### **FY 2015 President's Budget Funding for Administrator's Priorities**

(Dollars in Thousands)

<b>Appropriation</b>	<b>Program Project</b>	<b>Dollars</b>
EPM	TRI / Right to Know	\$75
EPM	Legal Advice: Support Program	\$75
EPM	Pesticides: Protect the Environment from Pesticide Risk	\$150
EPM	Environmental Justice	\$50
EPM	International Sources of Pollution	\$50
EPM	Human Resources Management	\$150
EPM	Children and Other Sensitive Populations: Agency Coordination	\$50
EPM	Brownfields	\$175
EPM	RCRA: Corrective Action	\$100
EPM	Pesticides: Realize the Value of Pesticide Availability	\$100
EPM	Civil Rights / Title VI Compliance	\$75
EPM	Exchange Network	\$75
EPM	RCRA: Waste Management	\$170
EPM	Compliance Monitoring	\$200
EPM	Criminal Enforcement	\$145
S&T	Research: Chemical Safety and Sustainability	\$100
EPM	Climate Protection Program	\$70
EPM	Financial Assistance Grants / IAG Management	\$150
EPM	Toxic Substances: Chemical Risk Review and Reduction	\$175
EPM	Federal Support for Air Quality Management	\$130
EPM	Marine Pollution	\$100
EPM	Surface Water Protection	\$300
EPM	Wetlands	\$130
EPM	Integrated Environmental Strategies	\$75
EPM	Science Advisory Board	\$100
EPM	Pesticides: Protect Human Health from Pesticide Risk	\$150
EPM	Pollution Prevention Program	\$100
EPM	State and Local Prevention and Preparedness	\$100
EPM	Civil Enforcement	\$180
EPM	Tribal - Capacity Building	\$50
S&T	Federal Support for Air Quality Management	\$50
EPM	Drinking Water Programs	\$100
EPM	LUST / UST	\$100

EPM	Clean Air Allowance Trading Programs	\$100
EPM	RCRA: Waste Minimization & Recycling	\$50
EPM	Reduce Risks from Indoor Air	\$150
S&T	Research: Air, Climate and Energy	\$100
EPM	Acquisition Management	\$150
EPM	Regulatory/Economic-Management and Analysis	\$75
EPM	IT / Data Management	\$200
EPM	Toxic Substances: Lead Risk Reduction Program	\$75
EPM	NEPA Implementation	\$100
EPM	Legal Advice: Environmental Program	\$100
EPM	Federal Stationary Source Regulations	\$100
<b>Total</b>		<b>\$5,000</b>

### **Proposed Rescission**

**Calvert Q71:** The FY15 budget proposes a \$5 million rescission of STAG unobligated balances. EPA's budget justification notes that these funds originate from Congressional designated projects that are complete and the grantee has returned the funds. Please provide a table with the name of the projects including the year appropriated, the original sponsor, the year the project was completed, the year funds were returned, and the amount returned.

**Answer:** To cover the proposed \$5 million rescission, EPA has identified nearly \$5.8 million in STAG that has been returned and is no longer needed for special appropriations projects. The attached file identifies the project and contains the additional details requested.

**Calvert Q72:** For the record, please provide a list of what EPA considers to be "voluntary programs" and their fiscal year 2014 and FY 2015 proposed budgets. Please also include the Agency's definition of a "voluntary program".

**Answer:** The EPA defines a voluntary program as any program in which the participants or partners are not statutorily required to participate. Enclosed you will find a list of the EPA's voluntary programs for fiscal years 2014 and 2015 organized by the National Program Manager (NPM) and Activity it operates under.

NPM	Activity/Program Name  Program Project	Approp	FY 2014 Enacted		FY 2015 Presbud	
			Total \$(K)	Total FTE	Total \$(K)	Total FTE
Total Agency Voluntary Programs			\$309,851.5	456.7	\$293,346.8	464.4
Environmental Programs & Management						
OA	President's Environmental Youth Awards		\$5.0	0.3	\$0.0	0.0
	Environmental Education (E9)	EPM	\$5.0	0.3	\$0.0	0.0
OA	Smart Growth Program		\$9,373.0	25.9	\$9,510.0	25.9
	Integrated Environmental Strategies (A4)	EPM	\$8,008.0	22.1	\$8,313.0	22.1
	Brownfields (43)	EPM	\$1,365.0	3.8	\$1,197.0	3.8
OAR	Clean Energy		\$3,146.0	8.7	\$3,336.0	8.2
	Climate Protection Program (46)	EPM	\$3,146.0	8.7	\$3,336.0	8.2
OAR	Community-Based Childhood Asthma Programs		\$6,514.0	18.0	\$6,236.0	15.0
	Reduce Risks from Indoor Air (H5)	EPM	\$6,514.0	18.0	\$6,236.0	15.0
OAR	Energy Star		\$46,814.0	83.7	\$49,041.0	80.1
	Climate Protection Program (46)	EPM	\$46,814.0	83.7	\$49,041.0	80.1
OAR	Indoor Air Quality in Healthy Homes and Buildings		\$8,005.0	26.7	\$8,441.0	23.4
	Reduce Risks from Indoor Air (H5)	EPM	\$8,005.0	26.7	\$8,441.0	23.4
OAR	GreenChill		\$160.0	1.0	\$160.0	1.0
	Stratospheric Ozone: Domestic Programs (C4)	EPM	\$160.0	1.0	\$160.0	1.0
OAR	Methane Programs		\$6,859.0	18.7	\$7,505.0	18.4

	Climate Protection Program (46)	EPM	\$6,859.0	18.7	\$7,505.0	18.4
OAR	<b>Global Methane Initiative</b>		<b>\$3,512.0</b>	<b>1.4</b>	<b>\$4,497.0</b>	<b>3.2</b>
	Climate Protection Program (46)	EPM	\$3,512.0	1.4	\$4,497.0	3.2
OAR	<b>Radon Risk Reduction</b>		<b>\$2,564.0</b>	<b>9.1</b>	<b>\$3,369.0</b>	<b>10.6</b>
	Indoor Air: Radon Program (76)	EPM	\$2,564.0	9.1	\$3,369.0	10.6
OAR	<b>Responsible Appliance Disposal Partnership</b>		<b>\$130.0</b>	<b>1.0</b>	<b>\$135.0</b>	<b>1.0</b>
	Stratospheric Ozone: Domestic Programs (C4)	EPM	\$130.0	1.0	\$135.0	1.0
OAR	<b>Smart Way Transport</b>		<b>\$2,763.0</b>	<b>10.9</b>	<b>\$3,015.0</b>	<b>10.9</b>
	Climate Protection Program (46)	EPM	\$2,763.0	10.9	\$3,015.0	10.9
OAR	<b>State Climate and Energy Program Voluntary Activities</b>		<b>\$3,146.0</b>	<b>8.7</b>	<b>\$3,336.0</b>	<b>8.2</b>
	Climate Protection Program (46)	EPM	\$3,146.0	8.7	\$3,336.0	8.2
OAR	<b>SunWise School Program</b>		<b>\$996.0</b>	<b>0.0</b>	<b>\$0.0</b>	<b>0.0</b>
	Stratospheric Ozone: Domestic Programs (C4)	EPM	\$996.0	0.0	\$0.0	0.0
OAR	<b>Voluntary High GWP Programs</b>		<b>\$1,091.0</b>	<b>2.7</b>	<b>\$1,112.0</b>	<b>2.7</b>
	Climate Protection Program (46)	EPM	\$1,091.0	2.7	\$1,112.0	2.7
OAR	<b>International Capacity Building</b>		<b>\$4,641.0</b>	<b>8.5</b>	<b>\$4,977.0</b>	<b>8.3</b>
	Climate Protection Program (46)	EPM	\$4,641.0	8.5	\$4,977.0	8.3

NPM	Activity/Program Name Program Project	Approp	FY 2014 Enacted		FY 2015 Presbud	
			Total \$(K)	Total FTE	Total \$(K)	Total FTE
OCSP	<b>Design for the Environment (includes DfE Best Practices Partnership; Formulators Program, Furniture Flame Retardancy Partnership, Lead Free Solder Partnership, and Green Engineering) -/1</b>		\$0.0	0.0	\$0.0	0.0
	Pollution Prevention Program (95)	EPM	\$0.0	0.0	\$0.0	0.0
OCSP	<b>Environmentally Preferable Purchasing-/1</b>		\$0.0	0.0	\$0.0	0.0
	Pollution Prevention Program (95)	EPM	\$0.0	0.0	\$0.0	0.0
OCSP	<b>Green Chemistry-/1</b>		\$0.0	0.0	\$0.0	0.0
	Pollution Prevention Program (95)	EPM	\$0.0	0.0	\$0.0	0.0
OCSP	<b>Green Suppliers Network (GSN)-/1</b>		\$0.0	0.0	\$0.0	0.0
	Pollution Prevention Program (95)	EPM	\$0.0	0.0	\$0.0	0.0
OCSP	<b>Partnership for Sustainable Healthcare (formerly Hospitals for a Healthy Environment)-/1</b>		\$0.0	0.0	\$0.0	0.0
	Pollution Prevention Program (95)	EPM	\$0.0	0.0	\$0.0	0.0
OCSP	<b>Pollution Prevention Program-/1</b>		\$13,904.0	63.7	\$13,486.0	58.9
	Pollution Prevention Program (95)	EPM	\$13,904.0	63.7	\$13,486.0	58.9
OCSP	<b>P2 Technical Assistance (formerly Pollution Prevention)-/1</b>		\$0.0	0.0	\$0.0	0.0
	Pollution Prevention Program (95)	EPM	\$0.0	0.0	\$0.0	0.0
OITA	<b>International Visitors Program</b>		\$65.4	0.5	\$66.1	0.5

	International Capacity Building (85)	EPM	\$65.4	0.5	\$66.1	0.5
<b>OSWER</b>	<b>Brownfields</b>		<b>\$26,002.0</b>	<b>136.4</b>	<b>\$28,280.0</b>	<b>157.9</b>
	Brownfields (43)	EPM	\$26,002.0	136.4	\$28,280.0	157.9
<b>OSWER</b>	<b>SMM Electronics Challenge</b>		<b>\$1,254.9</b>	<b>8.3</b>	<b>\$1,250.0</b>	<b>8.3</b>
	RCRA: Waste Minimization & Recycling (A2)	EPM	\$1,254.9	8.3	\$1,250.0	8.3
<b>OSWER</b>	<b>WasteWise</b>		<b>\$367.6</b>	<b>0.8</b>	<b>\$350.0</b>	<b>0.8</b>
	RCRA: Waste Minimization & Recycling (A2)	EPM	\$367.6	0.8	\$350.0	0.8
<b>OSWER</b>	<b>SMM - Food Management</b>		<b>\$560.0</b>	<b>4.0</b>	<b>\$560.0</b>	<b>4.0</b>
	RCRA:Waste Minimizaition & Recycling (A2)	EPM	\$560.0	4.0	\$560.0	4.0
<b>OSWER</b>	<b>SMM - State and Local Governments: SWMP/Zero Waste</b>		<b>\$499.7</b>	<b>2.0</b>	<b>\$500.0</b>	<b>2.0</b>
	RCRA:Waste Minimizaition & Recycling (A2)	EPM	\$499.7	2.0	\$500.0	2.0
<b>OSWER</b>	<b>SMM Federal Green Challenge</b>		<b>\$290.0</b>	<b>2.0</b>	<b>\$300.0</b>	<b>2.0</b>
	RCRA:Waste Minimizaition & Recycling (A2)	EPM	\$290.0	2.0	\$300.0	2.0
<b>OW</b>	<b>Adopt your Watershed</b>		<b>\$2.8</b>	<b>0.0</b>	<b>\$2.8</b>	<b>0.0</b>
	Surface Water Protection (D4)	EPM	\$2.8	0.0	\$2.8	0.0
<b>OW</b>	<b>Decentralized Wastewater Treatment Systems Program (Septic Systems)</b>		<b>\$350.0</b>	<b>2.0</b>	<b>\$325.0</b>	<b>2.0</b>
	Surface Water Protection (D4)	EPM	\$350.0	2.0	\$325.0	2.0

NPM	Activity/Program Name Program Project	Approp	FY 2014 Enacted		FY 2015 Presbud	
			Total \$(K)	Total FTE	Total \$(K)	Total FTE
OW	Lead in Schools Drinking Water Initiative		\$82.0	0.5	\$82.8	0.5
	Drinking Water Programs (53)	EPM	\$82.0	0.5	\$82.8	0.5
OW	National Fish and Wildlife Contamination Program		\$235.0	1.6	\$0.0	1.6
	Beach / Fish Programs (42)	EPM	\$235.0	1.6	\$0.0	1.6
OW	Volunteer Water Monitoring Program		\$212.1	1.0	\$219.1	1.0
	Surface Water Protection (D4)	EPM	\$212.1	1.0	\$219.1	1.0
OW	WaterSense		\$3,050.0	8.0	\$3,000.0	8.0
	Surface Water Protection (D4)	EPM	\$3,050.0	8.0	\$3,000.0	8.0
OW	Schuylkill Action Network		\$13.0	0.1	\$0.0	0.0
	Surface Water Protection (D4)	EPM	\$13.0	0.1	\$0.0	0.0
State and Tribal Assistance Grants						
OAR	National Clean Diesel Campaign (DERA Grants)		\$20,000.0	0.0	\$0.0	0.0
	Diesel Emissions Reduction Grant Program (H4)	STAG	\$20,000.0	0.0	\$0.0	0.0
OCSPP	Categorical Grant: Pollution Prevention		\$4,765.0	0.0	\$4,765.0	0.0
	Categorical Grant: Pollution Prevention (13)	STAG	\$4,765.0	0.0	\$4,765.0	0.0
OCSPP	Categorical Grant: Regional Agricultural Integrated Pest Management		\$0.0	0.0	\$0.0	0.0
	Categorical Grant: Pesticides Program Implementation (09)	STAG	\$0.0	0.0	\$0.0	0.0

<b>OCSPP</b>	<b>Categorical Grant: EPA School Integrated Pest Management</b>		<b>\$402.0</b>	<b>0.0</b>	<b>\$402.0</b>	<b>0.0</b>
	Categorical Grant: Pesticides Program Implementation (09)	STAG	\$402.0	0.0	\$402.0	0.0
<b>OSWER</b>	<b>Brownfields Projects</b>		<b>\$90,000.0</b>	<b>0.0</b>	<b>\$87,000.0</b>	<b>0.0</b>
	Brownfields Projects (79)	STAG	\$90,000.0	0.0	\$87,000.0	0.0
<b>OSWER</b>	<b>Categorical Grant: Brownfields</b>		<b>\$47,745.0</b>	<b>0.0</b>	<b>\$47,745.0</b>	<b>0.0</b>
	Categorical Grant: Brownfields (24)	STAG	\$47,745.0	0.0	\$47,745.0	0.0
<b>OW</b>	<b>Five-Star Restoration Program</b>		<b>\$332.0</b>	<b>0.5</b>	<b>\$343.0</b>	<b>0.0</b>
	Wetlands Program Development Grants (07)	STAG	\$332.0	0.5	\$343.0	0.0

/1 All pollution prevention programs have been consolidated under a single Pollution Prevention Program line item.

### Coal Ash

**Calvert Q73:** Question: What is the Agency's current timeframe for a revised determination on the treatment of coal ash under RCRA?

**Answer:** Under the terms of the consent decree in APPALACHIAN VOICES et al v. JACKSON (US District Court for the District of Columbia, Case 1:12-cv-00523-RBW), EPA is required to sign for publication in the Federal Register a notice taking final action regarding EPA's proposed revision of RCRA subtitle D regulations pertaining to coal combustion residuals by December 19, 2014. EPA is on schedule to meet this deadline. The consent decree was filed on January 29, 2014 and entered by the court on May 2, 2014.

### Lead in Ammunition or Fishing Tackle

**Calvert Q74:** What is the Agency's current timeframe for a proposing a rule to regulate the lead content of ammunition or fishing tackle?

**Answer:** In 1994, the EPA proposed a rule under Section 6(a) of Toxic Substances Control Act to prohibit the manufacturing, processing, and distribution in commerce in the United States,



of certain smaller size fishing sinkers containing lead and zinc, and mixed with other substances, including those made of brass (59 FR 11122, March 9, 1994). That proposal has not been finalized. In the 2005 Regulatory Agenda (70 FR 27625, May 16, 2005) and in the 2012 Federal Register Notice on EPA's disposition of the TSCA Section 21 petition (77 FR 10451, February 22, 2012), EPA indicated its intent to withdraw the proposal. The EPA is not working to finalize the proposed rule.

### **UST Annual Inspections**

**Calvert Q75:** The Energy Policy Act of 2005 mandated that EPA and State inspect all underground storage tanks once every 3 years. Have EPA and the States been meeting this requirement? If not, please provide a list of States that currently do not meet the 3 year requirement and the frequency by which they are currently inspecting their universe of tanks.

**Answer:** Since EPA began tracking compliance in 2010, several states have missed the inspection requirement each by 10 to 150 inspections, out of a national universe of more than 200,000 facilities. Most of these states quickly returned to compliance and addressed seasonal impacts and other inherent impediments that caused them to miss the requirement. The EPA has been working with states and will continue its active consultation with states to help address Energy Policy Act requirements.

Currently New York and Georgia are not meeting the Energy Act mandate of inspecting each tank within 3 years, at an estimated frequency of just more than 3 years for both. While the EPA is working with both states, we are working particularly with Georgia who has reached a more systemic shortfall without an apparent near-term solution. Georgia has lost several inspectors in recent years, and has not had the resources to re-hire. New York continues to work to meet the three year cycle. EPA has helped NY to close the gap and NY is hopeful they will meet the requirement in coming years. Another state, which is of concern to EPA is Texas. Texas has the largest tank population in the nation and has been able, with a significant investment of federal funding, to meet the Energy Policy Act inspection requirement. However, in coming years EPA will not be able to fully address the needs in Texas and expect that Texas may fall short. With recent reductions to LUST Prevention program resources in the FY 2013 and FY 2014 Enacted Budgets, we are working with all states to meet the 3-year inspection requirement but meeting the anticipated inspection needs will be a challenge.

### **State Formulas/Allocations**

**Calvert Q76:** If EPA is proposing to change any programmatic formula or allocation by which funds are distributed to States, then please provide a list of proposed changes for the record.

**Answer:** There are several proposed changes the Agency is proposing for funds distributed to the states. We have provided a list below.

State and Local Air Quality Management STAG Allocation Formula: In FY 2015, EPA plans to begin transitioning funding for particulate (PM<sub>2.5</sub>) monitoring from Clean Air Act (CAA) Section 103 authority to CAA Section 105 authority over a four year period. EPA expects the transition to be complete at the beginning of FY 2019.

Also in FY 2015, EPA plans to implement an updated allocation formula for CAA Section 105 funding to states. The update will modernize an allocation formula that was developed in the early 1990s. The new allocation recognizes the changing landscape of air quality issues, the increasing workload being imposed on state and local air quality agencies, and the need to sustain effective program operations. To help mitigate the impact of the new allocation formula to state programs, we intend to implement a phased-in approach over a multi-year period beginning in FY 2015. This approach will include moderating shifts in funding so that no Region would experience a decline of more than 5% of its prior year funding level.

Underground Storage Tanks STAG Allocation Formula: In 2012, EPA updated its formulas for allocating LUST grant funds to states, for both the prevention and cleanup programs. The cleanup formula had remained unchanged since the 1990s. The update was necessary because of the decline in appropriations for state grants and the need to have the allocation formula reflect the current needs and performance of the states. For example, some states were not using all of their grant funds and were carrying over balances, while other states had unmet needs, indicating that allocation revisions were needed. EPA worked closely with states as it developed revisions to the allocation formula.

The allocation formula is, however, only the first step in the allocation process. EPA's regions have more current information about individual state program needs, performance, and funding drawdowns. In addition to determining how best to distribute the cleanup performance funding pool, EPA's regions have the discretion to deviate from the formula as appropriate to better reflect state needs and performance. This has historically been an essential part of the allocation process and will continue to remain part of EPA allocation determinations.

In revising the formula, EPA followed the statutory requirements in section 9004(f)(2)(C) of the Solid Waste Disposal Act. The Underground Storage Tanks program held briefings with congressional staff to explain the need for allocation revisions.

Hazardous Waste STAG Allocation Formula: As part of the FY 2014 and 2015 President's Budget submissions, the agency committed to evaluate the allocation methodology for the state hazardous waste grant program under the Resource Conservation and Recovery Act (RCRA). The previous revision of the state grant allocation methodology occurred during the FY 1996 state grant distribution. Over the past year, the Office of Resource Conservation and Recovery (ORCR), has worked with states to revise the allocation methodology for hazardous waste grants under §3011 of RCRA. EPA plans to provide briefings to congressional staff on the details of the revised grant allocation methodology.

Toxic Substances Compliance STAG Allocation Formula: EPA is considering amending the TSCA STAG formula but has not reached a final decision. Before reaching a final decision, EPA will seek states' input into the proposed formula. The proposed TSCA funding allocation would be done in two phases. Phase 1 would begin in FY 2015 and Phase 2 in FY 2016.

Phase 1: Equal Formula.

An equal share to each Lead-based Paint, Asbestos and PCBs state/tribal program receiving a TSCA grant.

Phase 2: Weighted Formula.

The formula would weigh in favor of the Lead-based Paint program with more weight given to states that are authorized for the renovation, repair, and painting (RRP) program. This weighted formula reflects the current program priority and could be adjusted to reflect program priorities in the future.

### **Cleanup of Federal Hazardous Waste Sites**

**Calvert Q77:** It has been a few years since the Committee has inquired about the progress of negotiations with the Department of Defense on the cleanup of hazardous waste sites. Please provide an update on any recent Federal Facility Agreements (FFAs) with the DOD or DOE as well as a summary of progress on the ongoing work to cleanup sites at Federal facilities.

**Answer:** With the signing of the September 20, 2013 Tyndall (FL) Air Force Base CERCLA FFA, there remain only two overdue FFAs (out of 174 federal facility Superfund cleanup sites nationwide) to be signed – the Army’s Redstone Arsenal in Alabama and the 700 South 1600 East PCE Plume located near the George E. Wahlen Department of Veterans Affairs Medical Center in Salt Lake City. Negotiations are progressing satisfactorily on the 700 South 1600 East PCE Plume site which was listed by the EPA on the National Priority List (NPL) in 2013. Ongoing work to cleanup Federal facilities on the NPL is progressing. Additional information may be found: <http://www2.epa.gov/fedfac/federal-facilities-national-priority-list-measures-and-accomplishments>. EPA continues to pursue appropriate mechanisms, including through the use of enforceable agreements, to address contamination at Federal facility locations.

### **Guam Water and Wastewater Needs**

**Calvert Q78:** What are the Agency’s latest estimates for drinking water and wastewater infrastructure needs in Guam and how does the fiscal year 2015 President’s budget propose to address those needs?

**Answer:** The latest estimated need for Guam’s drinking water and wastewater infrastructure is \$598 million (\$234 million drinking water and \$364 million wastewater). The drinking water estimate, from the 2011 Drinking Water Infrastructure Needs Survey [http://water.epa.gov/grants\\_funding/dwsrf/upload/epa816r13006.pdf](http://water.epa.gov/grants_funding/dwsrf/upload/epa816r13006.pdf) represents the nation’s drinking water utilities’ need in infrastructure investments over the next 20 years for pipe as well as treatment plants, storage tanks, and other key assets to ensure the public health, security, and economic well-being of Guam’s cities, towns, and communities. The wastewater estimate, from

the 2008 Clean Watersheds Needs Survey (CWNS): <http://water.epa.gov/scitech/datait/databases/cwns/2008reportdata.cfm>) represents the capital needs for up to a 20-year period for publicly owned wastewater pipes and treatment facilities, combined sewer overflow correction, and stormwater management.

The FY 2015 President's budget provides a portion of the needs for Guam: \$2.8 million from the Drinking Water State Revolving Fund and \$3.9 million from the Clean Water State Revolving Fund for FY 2015. Nearly \$62 million has been or will be provided to Guam from the SRFs since 2009 (\$24.2 million from DWSRF and \$37.2 million from CWSRF).

Needs reported in CWNS are based on documentation, such as Capital Improvement Plans, Master Plans, SRF loan applications, and engineer's estimates. For Guam, the needs reported are for the wastewater facilities managed by the Guam Waterworks Authority and do not include needs for military institutions and other federal facilities.

For the Drinking Water Infrastructure Needs Survey, data are collected in the form of capital improvement projects to determine the need. States and other agencies work with the surveyed systems to identify applicable projects. To be included in EPA's assessments, each project must be for a capital improvement, be eligible for Drinking Water State Revolving Fund (DWSRF) funding, for furtherance of the public health protection goals of the Safe Drinking Water Act (SDWA), and submitted with supporting information that documents the three other criteria are met. For Guam, the needs do not include needs for military institutions and other federal facilities.

### **Restrictions on Communication with Outside Parties**

OECA's March 8, 2006 memorandum on "Restrictions on Communicating with Outside Parties Regarding Enforcement Actions" outlines the procedures and policy restrictions for Agency staff to follow with respect to the sharing of information related to enforcement actions, including communications with Congress. EPA has traditionally directed employees to not disclose information that will interfere with the proceedings.

It has been brought to the Committee's attention that EPA has shared information regarding the status of civil actions and investigations with certain Congressional members and staff prior to notifying companies. Further, EPA officials provided a letter summarizing the results of an Agency audit to Congressional staff prior to providing those results to the company. Congressional staff then released this information to outside entities. This information suggests that some Agency officials may be acting in a manner contrary to those restrictions outlined in the 2006 memorandum. This is of particular concern to the Committee as unauthorized disclosures prior to a final determination could be prejudicial or promote controversy. Further, given the sensitivities associated with proposed enforcement actions such actions foster an adversarial relationship rather than a collaborative approach to voluntarily address Agency concerns.

**Calvert Q79:** Would the actions as described above constitute a violation of EPA's policy on communication with outside parties regarding enforcement actions?

**Answer:** Per the *Restrictions on Communicating with Outside Parties Regarding Enforcement Actions* policy, if an EPA employee receives any such communication or request for case-specific information by Members of Congress or their staff, the employee should refer the requests to EPA's Office of Congressional and Intergovernmental Relations (OCIR) or the regional Congressional liaisons. The Agency is committed to continuing our practice to share this important policy with staff to ensure compliance.

**Calvert Q80:** Is the aforementioned 2006 memorandum still the governing document that represents EPA's policies on communication with outside parties regarding enforcement actions? Or have there been subsequent updates to the 2006 memorandum?

**Answer:** The 2006 memorandum is the most recent version, and is available to all OECA employees both on EPA's intranet website as well as the agency's internet website – please see [http://www2.epa.gov/sites/production/files/documents/commrestrictions-nakayamamemo030806\\_0.pdf](http://www2.epa.gov/sites/production/files/documents/commrestrictions-nakayamamemo030806_0.pdf).

**Calvert Q81:** Was 2006 the last time that the memorandum was circulated to EPA staff? If so, would the Agency commit to recirculating the memorandum as a reminder of Agency policy?

**Answer:** As discussed in our earlier response, the policy is posted on the internet and agency's intranet site. It is also circulated to OECA staff on an as needed basis when situations arise within the scope of the policy and was recirculated to the Regions in 2013. It is also discussed at meetings when there is a major hurricane or disaster event involving EPA that is likely to generate interest and questions from Members of Congress. We also recirculate the policy to staff working on enforcement matters related to such events (most recently in connection with Hurricane Sandy). We are committed to continuing our practice of sharing this important policy with staff to ensure compliance.

## **Questions Submitted for the Record by Representative Simpson**

### **Waters of the U.S.**

Administrator McCarthy, it should come as no surprise that, like Chairman Rogers and Chairman Calvert, I am deeply concerned about the proposed rule that you released on Tuesday expanding the EPA's jurisdiction under the Clean Water Act. I am vehemently opposed to the federal government threatening state sovereignty by claiming jurisdiction over waters that are currently regulated by the state. In Idaho, we call that a declaration of war.

In addition, frankly, I cannot understand why you would decide to issue a proposed rule before the scientific review of the connection between water bodies is complete. That alone leaves me in doubt as to whether this rule has any scientific validity.

**Simpson Q1:** Why would you draft, much less publish, a proposed rule before the research is complete?

**Answer:** In the case of the proposed rulemaking for the definition of "waters of the U.S." under the Clean Water Act (CWA), the EPA's Draft Connectivity Report ("Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence") provides a review and synthesis of the published, peer-reviewed scientific literature regarding the effects that streams, wetlands, and open waters have on larger downstream waters such as rivers, lakes, estuaries, and oceans. The draft report already has undergone both internal and external peer review and is now being reviewed by the EPA's independent Science Advisory Board (SAB). The SAB published its draft peer review on April 1 and has scheduled public meetings to discuss the draft review on April 28 and May 2. The SAB expects to issue a final peer review report later in 2014. The EPA has committed that the rule will not be finalized until the SAB review and the final Connectivity Report are complete.

One of my biggest concerns over redefining "Waters of the U.S." is the impact that expanding the federal government's jurisdiction over water will have on farmers and ranchers. If you could, would you clarify a couple of matters for me:

**Simpson Q2:** The list of agricultural exemptions that EPA has released only applies to Section 404 (dredge and fill) of the Clean Water Act. Is that correct?

**Answer:** Yes, the agricultural exemptions in the interpretive rule apply only to Section 404 of the Clean Water Act.

**Simpson Q3:** Why are you doing these in an interpretive rule as opposed to including them in the regulation itself?

**Answer:** The proposed rule on the Waters of the U.S. defines the waters subject to the Clean Water Act. The interpretive rule, on the other hand, clarifies the applicability of the exemption from permitting provided under Section 404(f)(1)(A) of the Clean Water Act associated with certain agricultural conservation practices. Because jurisdiction and permitting are separate actions, the EPA and the Corps of Engineers chose to use separate actions.

**Simpson Q4:** As I understand it, these ‘exemptions’ can be revisited at any time by the agency and be either narrowed or even repealed. Is that the case?

**Answer:** The EPA, the Army, and the U.S. Department of Agriculture have signed a Memorandum of Agreement that describes how the agencies will revisit the conservation practices considered exempt from permitting under Clean Water Act Section 404(f)(1)(A). The agencies have agreed to annually review and update, as necessary, the range of Natural Resources Conservation Service’s agricultural conservation practices that may include discharges to waters of the United States that are eligible for the exemption.

**Simpson Q5:** As I understand it, a farmer engaging in these normal activities would have to adhere to NRCS standards in order to avail himself or herself of the exemption. Is that true? Has that always been true? If not, isn’t it a fact that you are establishing a new Federal requirement for farmers to be able to use the Section 404 exemptions?

**Answer:** Certain agricultural practices such as plowing are explicitly (in the statute) exempt from permitting under Clean Water Act Section 404. There are no Natural Resources Conservation Service (NRCS) standards for these practices. Under the interpretive rule, the EPA and Corps of Engineers, with assistance from NRCS, identified 56 additional specific agricultural conservation practices that are newly identified as exempt from permitting under Section 404. These practices are defined by the accompanying NRCS technical standards, which is why the interpretative rule relies on agriculture producers to follow the NRCS’ technical standards. The interpretive rule provides greater clarity for farmers and ranchers interested in using the exemption for these NRCS-defined practices. It does not add any new requirements for practices already covered by the exemption.

There is a wide range of agricultural activities that are not related to dredge and fill - applying pesticides, for instance. As I understand your proposal, the list of exemptions does not deal at all with NPDES permit requirements that arise in section 402 of the Act.

**Simpson Q6:** If these areas – ditches, grass waterways, and others – are “waters of the US” under your proposal, isn’t it true that farmers are going to need NPDES permits for these activities?

**Answer:** It is important to emphasize that the proposed rule would not expand the scope of CWA jurisdiction with respect to agricultural ditches. In fact, we have clarified for the first time in a rule that many ditches and grassed waterways are never jurisdictional. As a result, we do not expect the proposed rule will have an overall effect on the need for farmers to obtain NPDES permits for discharges to ditches on their lands. The proposed rule will benefit landowners, including the nation's farmers, by making the definition of waters of the U.S. easier to understand and implement, including clarifying waters that are never covered under CWA. The interpretive rule expands the list of specific activities, consistent with the statutory language that would not require a Section 404 permit even if they do involve discharges of dredge or fill material to waters of the U.S. on agricultural lands.

**Simpson Q7:** If a ditch or grass waterway on a farmer's property is a water of the US, is it true that any activity falling outside the 404 exemption list could be subject to a 402 permit, assuming it is a discharge?

**Answer:** Because the proposed rule does not expand the scope of CWA jurisdiction, and even clarifies, for the first time in a rule, types of ditches and grassed waterways that are never jurisdictional, the proposed rule would not have an overall effect on the need for farmers to obtain NPDES permits for discharges to waters on their land.

### **State Primacy**

As you know, the state of Idaho recently passed legislation that will eventually lead to the state claiming primacy on the Clean Water Act. The state will spend millions on the multi-year transition to primacy, and once it gains primacy it will spend millions each year on its program. I am told that no federal funds exist to assist the state with the transition or with the ongoing program once it is up and running.

**Simpson Q8:** So I guess my question is this - if a state is going to spend millions to run a program now run by the EPA, and is going to hire dozens of people to handle a program now run by federal employees, why are there no savings to your agency and why is there no assistance to the state in running the program? Help me understand why the federal program doesn't shrink at the same time that the state program grows? And if it does shrink, why aren't some of the savings made available to states taking on this responsibility?

**Answer:** The EPA supports Idaho's desire to seek and develop an NPDES permits program. EPA will be working in close partnership with the state during this multi-year effort in order to develop an effective and sustainable program.



With regard to potential cost savings to the EPA resulting from Idaho's program approval, EPA has recent experience to draw from with the authorization of Alaska's program in 2008. Based on this experience, the EPA anticipates a need for regional staff to assist Idaho in assembling an approvable program package throughout the authorization review process. In addition, the EPA anticipates regional technical assistance during the early transition years prior to full program implementation. Once full state program implementation is achieved in Idaho, the EPA would continue in an oversight role by providing permit review and ongoing technical assistance. The EPA also will need to continue to address other program priorities where the EPA is the permit authority, including issuing permits in Indian Country throughout the region and with permitting in federal waters off the coast of Alaska, Washington, and Oregon.

Concerning federal financial assistance, Idaho will continue to receive annual grant funding under Section 106 of the Clean Water Act. However, consistent with the regulations to allocate these grant funds, the level of funding will not change if Idaho obtains approval for the NPDES program. However, states do have flexibility in the allocation of these funds among the various eligible programs.

Modernizing EPA, including its partnership with the States, is a central theme of EPA's 2015 Budget. Strengthening the partnership with States and increasing the efficiency of EPA's core functions are both key to building a high performing environmental protection enterprise. EPA will redesign its business processes, including contracts and grants management, the regulation development process, and records management, and implement approaches, such as strategic sourcing, in order to increase EPA's effectiveness in an environment of constrained resources.

### **Stormwater**

In June 2012, EPA released the Integrated Municipal Stormwater and Wastewater Planning Approach Framework that laid out a new model to help communities meet their regulatory obligations under the Clean Water Act (CWA) in an integrated manner. If successfully implemented, this model could help communities more affordably manage their clean water obligations while ensuring continuous progress toward water quality goals.

To date, however, only a handful of communities have come forward to express an interest in working with the Agency on this initiative and our understanding is that, for the most part, these communities are ones that are engaged in consent decree negotiations or are operating under an EPA enforcement action. The true test for this new framework will be whether communities that are not facing an enforcement action but have large water quality challenges nonetheless can use the Integrated Planning approach – as it has come to be known – to meet these challenges more

affordably. But, these communities may need some help to develop plans in order to take advantage of this model and these plans will cost money, some upwards of hundreds of thousands of dollars.

So, last year, we suggested that a small amount of money be set aside in EPA's budget to support 10 to 20 pilot communities to demonstrate and evaluate the effectiveness of this model. This appropriations request had broad bi-partisan support in both the House and Senate but in final conference negotiations we weren't able to get it across the finish line in part because we couldn't convince the Agency that supporting pilot communities with planning grants would help further their own initiative.

**Simpson Q9:** We'd like to try again this year and what I'd like to know is, will we have the support of the agency to undertake this pilot effort in order to demonstrate and evaluate the effectiveness of the Integrated Planning model to help communities meet their water quality goals?

**Answer:** The EPA agrees that integrated planning can help municipalities meet their Clean Water Act (CWA) obligations more affordably. The EPA encourages municipalities to consider sustainable solutions, such as green infrastructure, when they develop integrated plans. Using green infrastructure, in combination with gray infrastructure, can help municipalities achieve their water quality goals and can provide many other benefits as well, including making their communities more livable, reducing urban heat island effects, and reducing flooding, to name a few.

The EPA is facing challenging resource constraints and must balance many competing needs with the desire to support all worthwhile proposals, such as helping pilot communities develop integrated plans. The Agency is committed to working with municipalities that are interested in developing integrated plans and the EPA is looking for opportunities to do this within our current budget constraints.

### **Climate Change**

**Simpson Q10:** Administrator McCarthy, can you please elaborate on the EPA's climate priorities, as reflected in the FY 2015 budget proposal? It appears to me that while funding for the agency overall is down, climate initiatives appear to be getting an increase.

**Answer:** In the FY 2015 budget proposal, the Administration is seeking increases across a number of EPA's strategic goals. These include increases to address climate change, as responding to the threat of climate change is one of the Agency's top priorities.

Climate change poses risks to public health, the environment, cultural resources, infrastructure, the economy, and quality of life. The EPA's strategies to address climate change reflect the President's 2013 Climate Action Plan, which, among other initiatives, tasks the EPA with setting carbon pollution standards for power plants and applying its authorities and other tools to address hydrofluorocarbons (HFCs), methane, and greenhouse gases from mobile sources. The FY 2015 Agency priorities also include continued efforts to address greenhouse gas emissions, improve energy efficiency, and support the leadership of the United States in bi- and multi-lateral activities, such as the United Nations Framework Convention on Climate Change (UNFCCC), the Global Methane Initiative (GMI), the Climate and Clean Air Coalition (CCAC), and Montreal Protocol.

### **Fish Consumption**

EPA, during the recent webinar of the fish consumption survey for Idaho tribes, stated that they intend to derive historical/heritage fish consumption rates. EPA rules require that state and tribal water quality criteria be based on "sound scientific rationale" (see 40 CFR § 131.11(a)(1)).

**Simpson Q11:** How will EPA meet this requirement for sound scientific rationale in the determination of historical/heritage fish consumption rates? Also, what is the basis for using an "aspirational" or "heritage" fish consumption rate for the establishment of water quality criteria without such "rates" being speculative?

**Answer:** On December 13, 2013, EPA approved human health criteria for the Spokane Tribe consistent with EPA regulations at 40 CFR 131.11(a) "based on sound scientific rationale" that supported the Tribe's decision to ensure water quality sufficient to support traditional subsistence practices, which is fundamentally a question of tribal policy and within the Tribe's authority under the Clean Water Act (CWA). EPA evaluated the scientific defensibility of the assumptions and methodology the Tribe used in deriving criteria to protect its water quality goals, including the derivation of fish consumption and drinking water rates characteristic of the Spokane Tribe's subsistence traditions. EPA also evaluated whether the Tribe's criteria are sufficient to protect not only Section 304(a) fishable/swimmable goals, but also the goal of protecting fish consumption and drinking water rates characteristic of traditional subsistence lifestyle. EPA intends to use the same methodology for future Tribal water quality standard decisions that are based on subsistence/historical/heritage fish consumption rates. It should be noted that CWA Section 510 establishes that EPA "may not disapprove either Tribal or State standards solely on the grounds that the standard is too stringent."

Executive Order 13563, which discusses improving regulation and regulatory review, emphasizes regulations being "based on the best available science," that public participation occur through an

“open exchange of information and perspectives,” and that agencies provide “timely online access... including relevant scientific and technical findings.”

**Simpson Q12:** How will EPA comply with this Executive Order in relation to the fish consumption survey? For example, will EPA make all underlying data (excluding the identity of personal tribal members) available for the public to review and analyze?

**Answer:** EPA has ownership of all data collected, evaluated, and reported in connection with the Idaho tribal fish consumption surveys. EPA’s policy (EPA Order 1000.17 Change A1 Policy and Procedures on Protection of Human Research Subjects in EPA Conducted or Supported Research) for human subjects requires that the study protocol be reviewed by the Human Subjects Research Review Officer, and if necessary under that policy, by an Institutional Review Board to ensure that proper protections will be in place for protection of human subjects. EPA will inform the tribal governments of any third party request for information collected, evaluated, or reported as part of the tribal fish consumption survey, and shall invite the tribal government whose information is the subject of the request to consult formally under applicable federal law, executive orders, agency policies, or directives prior to EPA disclosing or otherwise taking any action with respect to the third party’s request for such information. Once the tribal government consultation is completed, EPA will share the requested information. Personally identifiable data that is associated with individuals will never be shared at any time during or after this work effort.

**Simpson Q13:** The EPA tribal survey relies upon recommendations set forth in a 2002 report by the National Environmental Justice Advisory Council (NEJAC). Since the recommendations in the NEJAC Report are not binding requirements under the Clean Water Act, how does EPA propose to rely upon the recommendations in the NEJAC Report in advising Idaho how to develop appropriate human health criteria?

**Answer:** EPA has made environmental justice a priority. All the work we do with our tribal and state partners takes into account environmental justice considerations. At the same time, EPA’s water quality standards are conducted in accordance with EPA regulations and guidance. For developing appropriate human health criteria, EPA uses EPA’s 2000 Methodology for Deriving Ambient Water Quality Criteria (AWQC) for the Protection of Human Health as the primary guidance. EPA’s preference is that states and tribes adopt human health criteria reflecting local fish consumption rates. Since 2000, EPA has published additional technical guidance to assist states, territories, and tribes in implementing the above recommendation, and provides technical assistance where needed. The guidance is available at <http://www.epa.gov/waterscience>.

EPA is planning to have a peer review panel to review the tribal surveys. Such a peer review process is consistent with the Presidential Memorandum on scientific integrity (March 9, 2009).

**Simpson Q14:** How will EPA select the members of the [tribal survey] peer review panel? Will EPA give consideration to nominations from the public for such a panel?

**Answer:** EPA believes that the purpose of peer review of the Idaho tribal fish consumption surveys, scheduled to occur in August 2015, is to determine the technical quality of the surveys. Candidates for the peer review process must have proven expertise in relevant technical areas and should not have an interest in the outcome of the peer review process to the maximum degree practicable. EPA would welcome suggestions for candidates from the public for the peer review process consistent with these criteria.

## **Questions Submitted for the Record by Representative Joyce**

### **Bedbugs and EPA's Denial of the Use of Insecticide Propoxur in Ohio**

In the fall of 2009, the Ohio Department of Agriculture, in recognizing the seriousness of the state's bed bug problem, requested that the U.S. EPA grant the state a public health exemption to allow authorized state certified pesticide applicators the use of insecticide propoxur to treat for bed bugs in certain settings. In June of 2010, your predecessor at the EPA wrote then-Governor Ted Strickland declining Ohio's request. Unfortunately, Ohio has not heard anything since late 2010 from the EPA in our request to use propoxur to get rid of bed bugs.

**Joyce Q1:** Is there any information you can provide on why the response has been delayed?

**Answer:** EPA has been in contact with Ohio several times since receiving the 2009 emergency exemption request for propoxur. We did not deny the request in 2010, but rather explained that our scientists had carefully reviewed it and concluded that the agency was unable to make the necessary safety findings as required by the Food Quality Protection Act and the Federal Insecticide, Fungicide, and Rodenticide Act. The EPA invited Ohio to submit additional data that could allow us to refine the risk, which could possibly allow the Agency to make the safety finding. The data we had in-house indicated an unacceptable risk to children who might be exposed to propoxur in and around rooms treated for bed bugs. Propoxur, along with other members of its chemical class, is known to cause nervous system effects. The agency's health review for its use on bed bugs suggests that children entering and using rooms that have been treated may be at risk of experiencing nervous system effects. The specific exposure scenario of most concern involves hand-to-mouth behaviors on the part of children.

EPA has been in touch with Ohio as recently as April 11, 2014, when we formally responded to another inquiry about propoxur. Again, the EPA has indicated to the State of Ohio that, if it still wishes to pursue a request for an emergency exemption to use propoxur, the state must submit updated information to address the identified risks of propoxur and the availability and adequacy of alternative methods of controlling bed bugs.

**Joyce Q2:** And if insecticide propoxur will not be approved by the U.S. EPA, can you provide any chemicals that would help reduce the bed bug problem?

**Answer:** Since 2009, and even earlier, EPA has been very proactive in working with the states and communities in the fight against bed bugs. The Agency has implemented a multi-prong strategy which emphasizes: encouraging the development of new tools by expediting all new product and new use registrations for bed bug control; providing objective, science-based information through communication materials and our dedicated web page; and collaborating with our federal partners and working with state and local governments. The EPA continues to support pest management professionals and other members of the public who fight bed bugs on a daily basis.

In general, states request an emergency exemption request under FIFRA Section 18 for pest problems when there are no alternatives for controlling the pest. There have been numerous new pesticides registered for bed bug control since 2009. Many of these newer products are showing good efficacy in both field and laboratory studies and research has shown that several of these products have a long lasting residual effect. As an example, in December 2013, a study was published in Pest Control Technology magazine examining the residual effectiveness of two recently registered products. Both of these are combination products that contain two active ingredients, one a pyrethroid and the other a neonicotinoid. The article stated that both products demonstrated long-term efficacy against both bed bugs and their eggs.

As a result of the efforts of EPA and others, the bed bug situation looks very different than it did in 2009. Though bed bugs are still very much a problem, particularly in multi-family housing, there are more tools and control techniques that are quite effective. In addition, the public is far more educated and able to participate in efforts to prevent bed bugs from ever taking hold, detecting them early before an infestation becomes severe, and in actively fighting them if an infestation does occur.

## **Questions Submitted for the Record by Representative Valadao**

### **Renewable Fuel Standard**

It is my understanding EPA has not yet finalized blending targets for the Renewable Fuel Standard for 2014. EPA's November proposal took a common sense approach by setting the mandate to hold biofuel production constant because consumers and their vehicles just can't handle any more ethanol.

Yet, at a January conference of state Departments of Agriculture, press reports quoted you as saying, " 'I have heard loud and clear that you don't think we hit that right,' and that given all the feedback, the final rule, when released, will be 'in a shape that you will see that we have listened to your comments.' "

To me, these comments suggest that EPA may reconsider its previous RFS proposal to appease agriculture interests to the detriment of consumers.

**Valadao Q1:** Should your comments be taken to mean consumers will have to continue using more and more ethanol, regardless of what their vehicles were designed to handle?

**Answer:** As indicated at the January conference, the agency will continue to listen to input from stakeholders, and that remains the case. Since the 2014 RFS volume requirements were proposed, we have met with multiple stakeholders to listen to their input on the proposed rule and to solicit any new and relevant data that should be factored into setting the volume standards for 2014. These stakeholders include representatives from the biofuel sector, the agricultural sector, petroleum refiners, environmental groups, and other organizations and sectors. In addition to stakeholder meetings, we are continuing to review and consider submitted comments from all parties. That too, is the case, for not only biofuel stakeholders but for all other stakeholders as well. To date, we have received over 300,000 comments on the proposal.

**Valadao Q2:** According to your assessment of the law, does EPA have the authority to finalize a rule outside of the existing November proposal?

**Answer:** The EPA will finalize the 2014 RFS volumes in full accordance with applicable law, including requirements related to the notice and comment process. EPA is currently in the process of reviewing the comments received on the proposal and gathering additional data and information. EPA will reflect this in the standards in the final rule.

It is my understanding the volume of cellulosic biofuel (up to 9 million gallons of cellulosic biofuel) mandated by the RFS proposed rule relies heavily on a company named KiOR. However, I'm told that analysts are now expecting KiOR to file for bankruptcy next week. EPA's proposal projects that any company currently in biofuels production will only continue to increase its production. As a result, the oil industry could have to buy EPA RFS credits if EPA sets its RFS standard too high and the fuel isn't produced. In any business, continually increasing production is far from a certainty.



**Valadao Q3:** Will EPA include and consider an assessment of the financial stability of the companies it relies upon to produce biofuels when setting cellulosic production mandates?

**Answer:** Each year, the EPA sets the required volume for cellulosic biofuels by assessing likely production levels for the following year. In order to determine projections of cellulosic production, we identify the subset of cellulosic biofuel producers that is expected to produce commercial volumes of qualifying cellulosic biofuel for use. To arrive at a projected volume for each facility, we develop company-specific projections based on discussions with cellulosic biofuel producers, the Energy Information Administration (EIA), the Department of Agriculture (USDA), and the Department of Energy (DOE). We also take into account a number of factors, including the current and expected state of funding for each production source. A detailed explanation of this process is included in the 2014 proposed rulemaking.

**Valadao Q4:** EPA is habitually late in issuing RFS rules. What plan do you have to get the rulemaking process back on track, and will the 2015 Final Rule be issued on November 30th, as required by law? Will it be released when the 2014 RFS volumes are released?

**Answer:** We agree that the RFS rulemaking process needs to get back on schedule. The RFS touches a range of complex environmental, energy, and agricultural issues, and the need to provide public notice and comment adds to the timelines for issuing annual standards. The EPA is currently considering how to improve our internal regulatory review processes in order to meet established deadlines.

**Valadao Q5:** Are you aware of the numerous studies, some of which are from government agency sources, which have found that the RFS increases demand for corn, which in turn raises the price of numerous food commodities and that these increased costs to businesses in the food industry supply chain are ultimately passed on to consumers in the form of higher food prices? For example, the CBO, the USDA's Economic Research Service, the National Research Council and the Congressional Research Service have all issued studies to this effect. Are you aware of these?

**Answer:** We are aware of such studies. In addition, the EPA has examined various impacts of the RFS program, including impacts on different commodity prices. For example, the EPA issued a regulatory impact analysis (RIA) for the March 26, 2010 RFS final rule, which implemented the requirements of the Energy Independence and Security Act (EISA) of 2007. That RIA provided a detailed assessment of a wide variety of key impacts from the RFS program. The EPA's analysis addressed impacts of EISA's requirements both on U.S. food prices and global food consumption, and contains explicit information about the assumptions and limitations of the data used to support the analyses.

**Valadao Q6:** Are you aware of the devastating impact the RFS has had on the livestock, dairy, and poultry industries in recent years? The RFS has raised the price of animal feed for animal farmers. Some have gone out of business as a result. The National Research Council found, in a 2011 study of the RFS, that the impact of biofuels on the retail price increase of broiler meat during 2007-2009 was in the range of 5.8 to 11.6%.

**Answer:** The EPA hears on an ongoing basis from stakeholders concerning their perspectives on the impacts of the RFS program. This includes information we have received from various parts of the agricultural sector, including livestock, dairy, and poultry producers, concerning impacts on animal feed. In addition, the EPA has examined various impacts of the RFS program, including impacts on different commodity prices. For example, the EPA issued a regulatory impact analysis (RIA) for the March 26, 2010 RFS final rule, which implemented the requirements of the Energy Independence and Security Act (EISA) of 2007. That RIA provided a detailed assessment of a wide variety of key impacts from the RFS program. The EPA's analysis addressed impacts of EISA's requirements both on U.S. food prices and global food consumption, and contains explicit information about the assumptions and limitations of the data used to support the analyses.

**Valadao Q7:** In that same study, the NRC estimated that a 20-40% increase in the price of corn, which is actually at the low end of what we've seen since enactment of the RFS, results in a 2-4% increase in prices of corn-based food products at the retail level. Retail prices are what consumers pay, so there's a direct impact on consumers from this policy.

**Answer:** As mentioned in the answer to your question 005 above, we are aware of such analyses. Stakeholders affected by the RFS program provide data and information on such topics to the EPA on a regular basis. In addition, the RIA mentioned above included an analysis on anticipated food price impacts.

**Valadao Q8:** According to our own CRS, the RFS will raise annual food costs by \$3 billion by 2022. Did you know that food price inflation since full implementation of the RFSII in 2008 has gone from slightly lower than general inflation to 60% higher than general inflation?

**Answer:** As mentioned in our answers above, the EPA hears on a regular, ongoing basis from stakeholders concerning their perspectives on the impacts of the RFS program. In addition, the EPA has examined various impacts of the RFS program, including impacts on different commodity prices. For example, the EPA issued a regulatory impact analysis (RIA) for the March 26, 2010 RFS final rule, which implemented the requirements of the Energy Independence and Security Act (EISA) of 2007. That RIA provided a detailed assessment of a wide variety of key impacts from the RFS program. The EPA's analysis addressed impacts of EISA's requirements both on U.S. food prices and global food consumption, and contains explicit information about the assumptions and limitations of the data used to support the analyses.

**Valadao Q9:** What can EPA do to relieve some of these costs for consumers?

**Answer:** The EPA issued a regulatory impact analysis (RIA) for the March 26, 2010 RFS final rule, which implemented the requirements of the Energy Independence and Security Act (EISA) of 2007. That RIA provided a detailed assessment of a wide variety of key impacts from the RFS program, including costs of the program.

Section 211(o)(7) of the Clean Air Act allows the Administrator of EPA, in consultation with the Secretaries of Agriculture and Energy, to waive the requirements of the RFS under certain criteria. The waiver could be issued if the Administrator determines -- after a notice and comment

period -- that implementation of the RFS requirements would severely harm the economy or environment of a state, a region, or the United States. The EPA has responded to waiver requests submitted under this provision of the Clean Air Act in the past, and our decisions in response to the petitions provide a detailed explanation of our interpretation of the statute and the EPA's analytical process. For example, please see the decision issued in 2012, at <http://www.gpo.gov/fdsys/pkg/FR-2012-11-27/pdf/2012-28586.pdf>.

### **Hydraulic Fracturing**

**Valadao Q10:** You have said that hydraulic fracturing can be done safely and have agreed with former EPA Administrator Lisa Jackson that there have been no confirmed cases of hydraulic fracturing impacting drinking water. Given that the President's Climate Action Plan relies heavily on the use of natural gas, what is your vision for educating the American public that hydraulic fracturing is safe, creates jobs, and has lowered American energy prices?

I am very concerned that the hydraulic fracturing study that EPA has been working on now for over four years has gone beyond Congressional intent and has expanded in scope. As I understand it, the request to EPA, in the FY 2010 appropriations report, was to study any link between hydraulic fracturing and drinking water. I understand the agency is now undertaking several new research areas and may have 30 or more separate reports as part of this study. Four years later, I am hearing concerns about how EPA is conducting the study and that the agency seems to be studying every water issue related to oil and gas development rather than focusing on fracking.

**Answer:** Responsible development of America's shale gas resources offers important economic, energy security, and environmental benefits. Recognizing this, in April 2012, President Obama signed E.O. 13605, *Supporting Safe and Responsible Development of Unconventional Domestic Natural Gas Resources*, which, among other things, charges Federal agencies to pursue multidisciplinary, coordinated research. The EPA is working with other Federal agencies, states, and other stakeholders to understand and address potential concerns with hydraulic fracturing so the public has confidence that natural gas production will proceed in a safe and responsible manner. The EPA continues to move forward on our national research study on the potential impacts of hydraulic fracturing for oil and gas on drinking water resources in response to a request from Congress. The study scope was designed to meet Congress' request and was established in November 2011 in the *Plan to Study the Potential Impacts of Hydraulic Fracturing on Drinking Water Resources*, after public comment and peer review by the Science Advisory Board. The scope has not changed since the release of the final study plan.

**Valadao Q11:** Many are becoming concerned that the EPA fracking study is moving beyond the scope given it by Congress. Would you care to respond to that and what is the EPA's current timeline for completing its study? What are current total costs to EPA to date related to the study? What do you expect to be the total costs of the study when finalized?

**Answer:** The scope of the EPA's *Study of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources* is responsive to Congress' original request and was

supported by the Agency's Science Advisory Board (SAB) in their review of the draft Study Plan in 2011. There has been no expansion of the scope beyond the original appropriations language.

We have recently intensified our state outreach efforts as part of the study. These efforts will ensure that states understand the data sources we used and will provide them further opportunity to recommend additional sources of information. The careful and intensive review and synthesis of literature, research results, and stakeholder input, along with the recently intensified state outreach effort, will ensure that EPA's draft science assessment is as robust and complete as possible. Our current timeline for release of the study for public comment and a formal SAB peer review is by early 2015.

Below is a table of funding for the study for each fiscal year:

<b>FY 2010 Enacted</b>	<b>FY 2011 Enacted</b>	<b>FY 2012 Enacted</b>	<b>FY 2013 Enacted</b>	<b>FY 2014 Enacted</b>	<b>FY 2015 Pres Bud</b>
\$1.9M	\$4.3M	\$6.1M	\$6.1M	\$6.1M	\$6.1M

The current costs of the study through FY 2015 total \$30.6 million. EPA has not yet developed its FY 2016 budget request.

**Valadao Q12:** As I understand it, EPA plans to release the fracking study to the public at the same time it is submitted to the Science Advisory Board for peer review. Is it normal for EPA to release its scientific studies before peer review is completed? Are you concerned that by releasing the study before peer review is completed, the EPA is setting itself up for a situation in which it may have to back track on findings that do not stand up to peer review? Couldn't that result in the public being unnecessarily scared or misled?

**Answer:** The EPA customarily makes a draft report available for comment at the same time it is submitted for peer review by the Science Advisory Board (SAB). With reference to Highly Influential Scientific Assessments, Section III(5) of OMB's *Final Information Quality Bulletin for Peer Review* states that: "Whenever feasible and appropriate, the agency shall make the draft scientific assessment available to the public for comment at the same time it is submitted for peer review (or during the peer review process)." When an agency releases information for the purposes of peer review, it is not considered an official "dissemination" of information to the public. This is made clear by adding a disclaimer notifying the reader that the draft document is being distributed for pre-dissemination peer review and does not represent Agency policy.

### **Waters of the United States**

**Valadao Q13:** Your agency is developing a rulemaking to redefine "waters of the U.S." A coalition of industry groups has critiqued a leaked version of your economic analysis for this rule. Is it true that in looking at costs your agency did not update 20 year old studies for inflation? Did EPA analyze each program under the Clean Water Act and whether that program would be expanded with this change and by how much?

**Answer:** The cost estimate in the economic analysis was based on 2010 dollars, and all cost and benefit information was adjusted accordingly. The EPA analyzed the proposed rule's expected impact to each program under the Clean Water Act. The methodology and findings are documented in "Economic Analysis of Proposed Revised Definition of Waters of the United States," September 2013, which is in the docket for the proposed Waters of the U.S. rule. The agency invites comments on this document as part of the public comment period on the proposed rule.

**Valadao Q14:** How long does it take and how much does it currently cost on average to get a nationwide permit under the Clean Water Act? Is it safe to say that increasing the number of waters under federal regulation, especially if you're including ditches, dry streams, and isolated ponds and puddles, will increase the average time it takes to get a permit and will increase the average cost to get a permit?

**Answer:** Clean Water Act Section 404 permits are issued by the U.S. Army Corps of Engineers, not by EPA, so specific expertise regarding the cost and processing time for these permits lies with the Corps. EPA and the Corps developed an economic analysis of the expected benefits and costs of the agencies' proposed "Waters of the U.S." rulemaking, which is available at: [http://www2.epa.gov/sites/production/files/2014-03/documents/wus\\_proposed\\_rule\\_economic\\_analysis.pdf](http://www2.epa.gov/sites/production/files/2014-03/documents/wus_proposed_rule_economic_analysis.pdf). The agencies believe that the proposed rule will benefit businesses by increasing efficiency in determining coverage of the Clean Water Act.

The agencies' proposed rule does not protect any new types of waters that have not historically been covered under the Clean Water Act. The rule also clarifies for the first time in regulation that many types of waters including farm ponds, gullies, rills, non-wetland swales, and puddles are not jurisdictional "waters of the U.S."

**Valadao Q15:** We are under a drought in CA. Can you tell me: If I have a dry stream right now, but by some miracle we get rain and the stream bed has some flow for a short time that dries up before it gets to a larger body of water, with 100 percent certainty, can you tell me whether that stream bed is or is not a "water of the U.S."? That scenario is typical of those that exist on many agricultural lands. If you cannot answer my question with 100% certainty, then how can you tell farmers and ranchers that they have nothing to worry about with respect to the Waters of the U.S. Rule?

**Answer:** The proposed rule published by the EPA and the U.S. Army Corps of Engineers will help provide additional clarity regarding waters that are and are not jurisdictional under the Clean Water Act. The agencies' proposed rule would not protect any new types of waters that have not historically been covered under the Clean Water Act and is consistent with the Supreme Court's more narrow reading of Clean Water Act jurisdiction. Consistent with the more than 40-year practice under the Clean Water Act, the agencies make decisions regarding the jurisdictional status of particular waters almost exclusively in response to a request from a potential permit

applicant or landowner asking the agencies to make such a determination. As such, determining jurisdiction of a particular waterbody is a case-by-case, fact-specific determination, which the agencies believe will be made more straightforward under the proposed rule.

Under the proposed rule, if the stream flows to a Traditional Navigable Water, Interstate Water, or Territorial Sea, including intermittent and ephemeral flows, and there is an Ordinary High Water Mark (OHWM), and bed and banks, the stream would be classified as a tributary and would be considered to be a water of the U.S. In terms of clarity to the regulated public, this is an improvement from the current rule because the proposed rule includes a regulatory definition of the key regulatory term “tributary.”

**Valadao Q16:** If I am a land owner and EPA has told me, through a jurisdictional determination, that my dry stream bed is not a “water of the U.S.,” can a third party still sue me under the Clean Water Act if they disagree with the EPA’s determination?

**Answer:** An Army Corps of Engineers or EPA jurisdictional determination would not be binding on a 3<sup>rd</sup> party in a citizen suit enforcement action. However, we believe the agencies’ expert opinion would be an important factor to which any Court hearing such a suit would give substantial weight.

### **Herbicide-Tolerant Crops**

Weed resistance is not a problem unique to biotech crops. Ensuring farmers have access to multiple modes of action to address weed resistance is very important. One way to help farmers is to ensure they have access to new herbicide-tolerant crops. I understand USDA has not yet deregulated products that will give farmers some additional ammunition against stubborn weeds and that EPA continues to wait for USDA’s deregulation decisions before taking action on herbicide approvals.

**Valadao Q17:** Can you help me understand why it is taking so long for these crops to get into the marketplace?

Is your agency required to wait on USDA’s deregulation before the EPA takes action?

Are USDA and EPA efficiently coordinating the deregulation of herbicide-tolerant crops? If so, what coordination has occurred that can be quantified as an improvement in coordination between the agencies?

**Answer:** The EPA recognizes that weeds are becoming increasingly resistant to glyphosate-based herbicides and are posing a problem for farmers. USDA is responsible for deciding whether to deregulate crops genetically engineered to tolerate herbicide use. The EPA is responsible for regulating the use of herbicides on such crops.

On April 30, 2014, the EPA made available for public comment a proposed decision to register *Enlist Duo* containing glyphosate and the choline salt of 2,4-D for use in controlling weeds in corn and soybeans genetically engineered to tolerate 2,4-D. EPA's action would provide an additional tool to reduce the spread of glyphosate resistant weeds. The EPA worked closely with USDA to ensure a thorough scientific review of the potential impacts on human health and the environment to support the EPA's proposed decision. This close coordination will enable the EPA to take final action on *Enlist Duo* shortly after USDA makes its decision on deregulation of the genetically-engineered crops.

## **Questions Submitted for the Record by Representative Stewart**

### **SAB and Water Connectivity**

As you know, the Environmental Research, Development and Demonstration Act of 1978, or ERDDAA, states that the EPA “shall establish a Science Advisory Board which shall provide such scientific advice as may be requested by...the Committee on Science, Space and Technology.”

You are responsible for appointing members of the EPA’s Science Advisory Board. This panel exists to “provide such scientific advice as may be requested” by Congressional Committees of jurisdiction. Despite this statutory requirement, your Office of Congressional and Intergovernmental Relations has prevented the Science Advisory Board from responding directly to requests for scientific advice by the Science Committee, including on critical ongoing reviews related to the Clean Water Act and hydraulic fracturing.

**Stewart Q1:** I’ve checked the report accompanying ERDDAA. It indicates that the goal was to “allow Congress to request scientific advice from the EPA Science Advisory Board without the SAB being obligated to seek permission from the Administrator before providing such advice to the Congress.” (HR Rep No. 96-959 at 58 (1980). In your view, does the SAB need to ask your permission to respond to requests for scientific advice to Committees of jurisdiction?

**Answer:** Discussions have been ongoing regarding the proper lines of communication between members of Congress and appointed members of EPA’s federal advisory committees.

**Stewart Q2:** On December 16, 2013 – At the end of the public comment period of the meeting, a letter was transmitted from EPA Associate Administrator to Chairmen Smith and me regarding “charge questions” for the water connectivity report we sent to the Board. The letter from the SAB stated that “we believe many of the questions you raise are addressed in the existing charge questions.” Is it your view that the SAB is properly responding to questions from the Committee on Science, Space and Technology?

**Answer:** In the letter dated December 16, 2013, from EPA’s Office of Congressional and Intergovernmental Relations to Chairman Stewart, the Agency provided its assessment that many of the questions identified by the Chairman were addressed in the existing charge questions provided by the EPA to the SAB panel. Several of the questions were outside the scope of the SAB panel’s scientific purview. The SAB panel is currently preparing a draft consensus report in response to the EPA charge questions which will be reviewed by the Chartered SAB by summer 2014.

**Stewart Q3:** On a related issue, does the SAB have to ask your permission to testify in front of a Congressional Committee?

**Answer:** Discussions have been ongoing regarding the proper lines of communication between members of Congress and appointed members of EPA’s federal advisory committees, including the Science Advisory Board.



**Stewart Q4:** The committees of jurisdiction have requested that, consistent with the historical practice, the SAB provide testimony on EPA's budget request as well as the Board's own budget. The SAB's request includes several millions of dollars and a \$1.1 million increase. Yet the SAB denied this request stating that they do not have permission from the EPA. Why should we provide appropriations for this body if it is not following its statutory obligations and fails to respond to communications from Congress related to scientific inquiries and matters related to its budget?

**Answer:** Congress established the SAB in 1978 and gave it a broad mandate to advise the Administrator on a wide range of highly visible and important scientific matters to ensure that the Agency's technical products are of the highest quality.

The Agency has requested a \$1.1 million increase for the SAB in the FY 2015 President's Budget. Specifically, \$825,000 of the increase will focus on assessing Integrated Risk Information System chemicals. The remainder of the increase will focus on hydraulic fracturing, an economy wide modeling review and perhaps several additional reviews as identified by the Chartered SAB.

**Stewart Q5:** You just released your regulation defining federal jurisdiction under the Clean Water Act, despite the fact that the Science Advisory Board has not completed their review of the underlying scientific report. Will you ask the panel to review the proposed rule? And will you allow the Board to follow the law and respond to specific questions submitted by Congress on the proposed rule?

**Answer:** The Department of the Army and EPA released their proposed rule to clarify the regulatory definition of "waters of the United States" in late March 2014 and it was published in the Federal Register for public notice and comment on April 21, 2014. The agencies have committed to complete the rulemaking only after the SAB review of the Science Report is completed and we have addressed their recommendations. The SAB panel reviewing the Science Report has indicated their interest in evaluating the scientific basis for the proposed rule and we look forward to their input. The ad hoc panel convened to review the Science Report is composed of technical experts with the experience, education, and background needed to provide such scientific advice. We look forward to continue to work with the committee and the SAB as the Panel assesses the scientific and technical issues before them.

### **NSPS (New Source Pollution Standards)**

**Stewart Q6:** You are currently reviewing New Source Pollution Standards. Have you consulted with Fish and Wildlife on any non-air impacts resulting from the proposed rule?

**Answer:** The EPA's proposed new source performance standards for emissions of greenhouse gases from new fossil fuel-fired power plants was published in the *Federal Register* on January 8, 2014, and the comment period was through May 9, 2014. Any final rule the agency issues will be based on sound science, be legally sound, and clearly explain the agency's compliance with the Endangered Species Act while also addressing any comments we receive on that issue.